"Kevin Lunny" <kevin@drakesbayoyster.com>
07/20/2010 10:26 AM

To "Cicely Muldoon" <Cicely_Muldoon@nps.gov>
cc
bcc
Subject

History: This message has been forwarded.

Dear Cicely,

The week before last, I was in San Diego attending a conference on ocean acidification (more on it later, we should discuss what was presented -- implications for Point Reyes NS) and directed David Weiman to submit our first round of questions on our behalf regarding the NPS "Sunday Project." Appended to this letter is a second round of questions. Additional rounds of questions are pending and will be submitted shortly.

The May 1, 2009 document is troubling by itself. The NPS remote camera program requires considerable explanation and we're trying to understand NPS actions that directly impact our farm, our workers and our family.

I am aware that some of the questions overlap and may even be duplicative. NPS, in the past, has not been forthcoming. After learning that NPS reissued its report, "*Drakes Estero, A Sheltered Wilderness Estuary* , several times, we wrote and asked NPS to tell us how many times it was published and why? NPS wrote back, through Rep. Lynn Woolsey, and said that they (NPS) didn't know what we meant by "published." NPS did not want to reveal that the report was republished several times, or that they ignored the requirements of Director's Order #11B, which required NPS to post the changes with explanations for each. We sincerely hope that, with your becoming Superintendent, those days are over.

As you are undoubtedly aware, Ben Becker contacted me to discuss how the harbor seal inventory and monitoring database can be used. I am happy to meet with him -- and will do so, but believe the issues involving the disputed NPS Harbor Seal Disturbance Data need to be resolved first, as it directly affects the database.

As indicated in the letter, we are obligated to submit additional documentation and analysis to the MMC and therefore request that responses to these requests be expedited.

We thank you for coming out to the oyster farm. In 2004, a key factor in deciding to purchase Johnson's Oyster Company -- was -- and is -- that this little oyster farm is the crown jewel of Point Reyes. We believed then and still believe now that we can improve it, make it better and establish it as a "place of great pride" in collaboration with NPS. We believe that we can accomplish this by working with you.

Sincerely,

Kevin Lunny

20100720 DBOC to Cicely Muldoon.pdf

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1149
kevin@drakesbayoyster.com
nancy@drakesbayoyster.com

July 20, 2010

Cicely Muldoon
Superintendent
Point Reyes National Seashore
One Bear Valley Road
Point Reyes Station, CA 94937

Dear Cicely,

The letter and questions are submitted to further understand the NPS, *Briefing Statement, National Park Service Response to Goodman's January 18, 2009 Letter to NRC, May 1, 2009* (NPS Briefing Statement), a document that we first learned of in early June 2010, and other information from NPS made available only after the June 7, 2010 Marine Mammal Commission (MMC) meeting. This NPS report and information recently made available for the first time raises a number of questions. We seek your assistance to fully understand NPS objectives, purposes, and programmatic accomplishments of what NPS called a "remote camera."

As recently reported to you, DBOC did not know about these undisclosed cameras or the NPS remote camera program. DBOC obtained a copy of the NPS Briefing Statement on the eve of the MMC meeting on June 7, 2010 and learned about the hidden camera only the day before.

The 33-page NPS Briefing Statement discusses the camera and its use in two instances. The first, according to this NPS (Page 1 – second page of the document) stated:

> *NPS has time stamped images of seals on the sandbars...during the 2008 breeding season in Drakes Estero.*

The second reference is found in Appendix A, "*NPS Review of Tidal Patterns and Harbor Seal Behavior in Drakes Estero*" and stated:

For the six dates selected by NPS for review (Table 2), the NPS examined date and time stamped photographs taken of Drakes Estero by remote camera. The remote camera was on-site at Drakes Estero for the majority of the of 2008 breeding season, capturing images every minute from 7:00 AM to 7:00 PM. The camera view encompassed the "lateral" channel with sandbar OB in the foreground.

At the June 7, 2010 MMC meeting, NPS officials acknowledged the camera's existence and explained, at the time, that it was used for wildlife management purposes. Several days later, on June 10, 2010, an article in the West Marin Citizen, based on interviews with Dave Graber, NPS Pacific West Regional Scientist and David Press, PRNS Data Manager disclosed that (a) there were two, not one, cameras; (b) the purpose of the camera involved not just monitoring wildlife but documenting harbor seal disturbances; (c) the "*images were used as a way to improve seal observations and reduce disturbances*"; and, (d) the installation of the cameras "*was an experiment to collect data for both harbor seals and disturbances.*"

The two key paragraphs in the Citizen's story state:

David Graber, Chief Scientist for the Pacific West Region of the National Park Service spoke of one camera installed by Seashore officials and said the images were used as a way to improve seal observations and reduce disturbances at the different sites. The camera, he said, was not used to observe the oyster operation. 'Have we used the photos against [oyster company owner] Kevin Lunny?" asked Graber in response to the question if Seashore officials were using the camera as a way to monitor oyster operation. The answer was no, he said.

David Press, the data manager for the Seashore said the camera was set up in an experiment to collect data for both harbor seals and disturbances. 'The camera was an experimental approach to see if we could add to our understanding of harbor seals and harbor seal disturbances in general within the upper part of the Estero,' Press said.

A June 22, 2010 email from you then revealed, for the first time, that a camera was installed and active in Drakes Estero prior to 2008. Later, on June 30, in another communication, you provided additional detail and stated that the camera was first installed and operational on May 5, 2007.

We have been reviewing the limited photographic data and other information you provided and are still confused by the remote camera program. Therefore, in addition to the questions submitted on July 8, the following questions and requests for information (and where appropriate, documentation and source materials) are submitted so that DBOC can understand the NPS remote camera program.

(1) **NPS Experimental Program - Plan and Approval, Acquisitions and Installations**

(a) Please provide the Work Plan for the proposed experiment.

(b) Who directed, approved, or concurred in the establishment of this experiment and/or program?

(c) Provide copies of all documents, including but not limited to reports, papers, emails, communications, summaries, directives or and/or other documents related to this experiment and/or program.

(d) Provide all justification documents related to this proposed experimental program.

(2) **NPS Experimental Program – Progress Reports**

(a) Please tell us how often, per the NPS Experiment's Work Plan, were Progress Reports required prepared. Weekly? Quarterly? Seasonally? Annually?

(b) Provide copies of the regular progress reports.

(3) **NPS and DFG 1992 Multi-Agency Harbor Seal Protocols.** NPS, NMFS and California Department of Fish and Game executed Harbor Seal Protocols for Drakes Estero in 1992, which remain current and operational today.

(a) Did NPS communicate with its multi-agency partners about this experiment?

(b) Did NPS ask these agencies to review or comment on the experiment? If so,

provide copies of their comments and/or responses.

(4) **NPS Annual Harbor Seal Reports – Failure to Reference Experiment**

(a) NPS, at Point Reyes, published annual harbor seal reports in 2007, 2008 and 2009 (among others). Why is the remote camera experiment and/or program not mentioned, referenced or discussed?

(5) **NPS, San Francisco Bay Area Network Pinniped Monitoring Protocol, Version 3.02, December 2009.** NPS issued, after a five-year process, a new updated and revised harbor seal monitoring protocol in December 2009. According to the updated protocol, "*protocols document standardized objectives, methods and data management to enable high quality evaluation of pinniped population status for the region.*"

(a) When the updated protocols were being finalized, NPS at Point Reyes had three years experience with the remote camera program, yet the new protocols are silent about it. Why?

(b) How was the remote camera program evaluated for inclusion in the protocols?

(c) Did the remote camera program meet the "high quality evaluation" test set forth in the protocols?

(6) **NPS and DBOC Statement of Principles.** In March 2008, NPS and DBOC executed a Statement of Principles Regarding Environmental Evaluations at Drakes Estero which, among other things, required NPS to "*advise DBOC of any scientific, technical, or other information...*" to be used in future environmental reviews and "consult with DBOC in good faith in the design of any further scientific or technical studies..."

(a) Based on this agreement, NPS should have notified DBOC of the decision to install the camera. Why did NPS fail to inform or notify DBOC of the existence and use of the camera in 2007, 2008, 2009 and 2010?

(b) Why did NPS fail to consult in good faith with DBOC regarding this new experimental program as specified by this Agreement?

(7) **Experiment Site Selection – Statistical and Experimental Justifications.** As we understand the NPS harbor seal observation program, NPS monitors at least eight sandbars or subsites within Drakes Estero for counts, observation and disturbance.

According to your recent email to us, this remote camera program has been in place for four years.

(a) What was the statistical and experimental justification criteria used to choose the lateral channel between OB and UEN as the target of one camera and to choose UEF as the target of the second?

(b) NPS records (2005–2007) indicate there were approximately 3,000 seal flushes from several hundred disturbances events. These were attributed to various sources (hikers, clammers, airplanes, kayaks, etc.). According to NPS disturbance records, only a handful of these flushes occurred at the three subsites monitored by the remote cameras. Why did NPS select subsites with such few disturbances for the experiment?

(c) Why did NPS select three subsites for this experiment that excluded virtually all disturbances -- except those allegedly from or associated with oyster activities?

(8) **Establishing Baselines and Parameters for Experiment.** The vast majority of federally funded research requires a Quality Assurance Protocol and Plan (QAPP) or equivalent be completed that defines all factors concerning data gathering, testing procedures , statistical analysis, interpretation of data, maintenance of records, etc. Even the most informal project requires a full work/study plan.

(a) Please provide us with the QAPP or equivalent work study plan that shows the protocols for the photographic collection of disturbance, especially the means of evaluating the identity of vessels associated with the disturbance.

(b) What information, advice and/or instructions regarding boat identification did NPS provide to those participating in the experiment and/or reviewing photographic data? Provide copies of the documents in which NPS instructs those managing or participating on the difference between a DBOC boat and other motorized boats and a DBOC boat and kayaks and/or canoes.

(9) **NPS Objective – Improving Observations and Reducing Disturbances.** According to the Regional Chief Scientist Graber, the purpose of the remote camera program was to improve observations and reduce disturbances.

(a) How did this experimental program measure progress for "improved observations?"

(b) Please identify the "improvements" achieved. What was the starting point and how much as been accomplished? Provide annual progress reports (or other supporting documentation).

(c) How did this experimental program measure progress for reduction of disturbances? What was the starting point and how much has been accomplished during the study period?

(10) **NPS Map, undated, entitled, "Drakes Estero Camera Angles."** This map shows the approximate placement of two cameras and the approximate camera angles in Drakes Estero.

(a) The map displays the camera angles for 2008 to 2010. The year, 2007, was not included. Please provide a map showing the location, placement and angle of view for 2007.

(b) For the lower of the two cameras (camera closer to the bottom of the page) it displays a label that reads "long and short views." Can you please explain how this worked? Were both used in each of the years – 2008, 2009, and 2010? What was the purpose of each?

(c) This map displays, in a yellow line, a category labeled, "Maximum Harbor Seal Use Areas (OB and UEF only)," a designation or description never previously seen. Explain this designation and describe what it includes and excludes.

(d) Based on our five-years of experience Drakes Estero, harbor seals haul out in very large numbers along the main channel, outside your selected camera angle. Why would NPS exclude the vast majority of harbor seals and their haulout sites from the remote camera program – a program ostensibly designed to improve harbor seal observations?

(e) NPS, at various times during the past five years, has produced at least six different maps highlighting harbor seal haulouts. Which map, according to NPS, is correct?

(11) **Four-Year Remote Camera Experiment Excludes High Disturbance Areas.** The

remote camera program, throughout the four-year experimental program is directed at three subsites (and only small portions of those subsites).

(a) The remote cameras are not moved to and directed at other subsites, trails, or areas where NPS Harbor Seal Database records show high incidences of disturbance. Why?

As you are aware, Point Reyes National Seashore did not disclose the existence of this program. We are, therefore, now compelled to submit detailed questions and request information for what, we believe, should have been disclosed some time ago.

We want to express our thanks and appreciation for your response to our requests for maps, photographic data and other information. We recognize that these are difficult issues. We look forward to continuing and improving communication and information sharing with your office. We know that reconciling these issues will serve all of us and our community the long run.

Again, we request that responses be expedited. We are very sensitive to the MMC's need to finalize their report. It's essential that this information be available to us – and them – in a timely manner.

We thank you for your cooperation and assistance.

Sincerely,

Kevin Lunny Nancy Lunny

Cicely Muldoon/PORE/NPS
07/20/2010 09:33 AM

To "Kevin Lunny" <kevin@drakesbayoyster.com>, "'Nancy Lunny'" <nancy@drakesbayoyster.com>
cc tragen@mmc.gov, agresources@erols.com
bcc Ann Nelson/PORE/NPS
Subject Re: NPS 06/28/10 Letter to Fish and Game

Dear Kevin and Nancy:

First, let me thank you for spending the time to give me a tour of the oyster operation last Wednesday. It was good to meet one on one. It is clear that your passion for and knowledge of the oyster farm runs deep.

A few thoughts in response to your letter from this Sunday. I am copying Tim, as the Marine Mammal Commission is referenced, and as we all share a hope for improved communications. David, I'm copying you as well, as your signature block appears at the bottom of the letter signed by Kevin and Nancy.

I regret that you find our letter to CDFG so objectionable, it was certainly not intended to be, and I welcome further discussion on this. Although the park was not copied on your proposal, I thought as a matter of courtesy I should cc you on our response. We spoke last week of the complexity of permitting operations within the Estero. I would welcome a way to at least synchronize our approaches and to ensure we all understand where we are in the process.

In spite of your assertion, I fully support Tim Ragen's efforts to change the tone of this discussion, respect one another's viewpoints, stand down from independent courses of action, and pursue an adaptive management approach. Defining a collaborative approach among Estero stakeholders seems like a good place to start. We all care deeply about this extraordinary public resource, and share, I firmly believe, a commitment to its health. As I mentioned last Wednesday, a clear path to resolving the future of the Estero is in everybody's interest.

My sincere hope is that we can forge a positive working relationship, in spite of any differences we may have about the issues that surround the Estero. We have to start from a place of respecting one another's outlook on this very complex issue, finding those places on which we can agree, and defining how we can work together. Long after the current issues are behind us, and the lawyers and lobbyists have left the discussion, we will still be neighbors. Kevin, I thought you said it eloquently early on in our discussion last Wednesday, when you spoke of well intended people on both sides of this issue trying to do the right thing. I couldn't agree more. To me, this seems like a fundamental basis for a more positive discussion.

Sincerely,

Cicely

Cicely Muldoon, Superintendent
POINT REYES NATIONAL SEASHORE
1 Bear Valley Road
Point Reyes Station, CA 94956
phone (415) 464-5101
cicely_muldoon@nps.gov
Commitment to mission is commitment to each other

"Kevin Lunny" <kevin@drakesbayoyster.com>

"Kevin Lunny"
<kevin@drakesbayoyster.com>
07/17/2010 06:34 PM

To "Cicely Muldoon" <Cicely_Muldoon@nps.gov>
cc "'Nancy Lunny'" <nancy@drakesbayoyster.com>
Subject NPS 06/28/10 Letter to Fish and Game

Cicely,

The NPS letter of June 28 to California Department of Fish and Game was received earlier today.

By this letter, you accomplish two things. First, you ratify Don Neubacher's approach to business here at Point Reyes -- needlessly impose delays, drive up costs and maximize conflict. Second, you unilaterally reject the efforts of Tim Ragen and the Marine Mammal Commission to improve the way business has been conducted and to improve relations.

Remarkably, you have now positioned NPS to oppose efforts to enhance the native oyster here in Drakes Estero.

The errors and distortions contained in the NPS letter will be addressed next week.

On Wednesday at the oyster farm, you offered words of cooperation. By this letter, you withdrew them.

Deeply saddened,

Kevin Lunny Nancy Lunny

David M. Weiman
Agricultural Resources
635 Maryland Ave., N.E.
Washington, D.C. 20002
(202) 546-5115
(202) 546-4472 fax
agresources@erols.com

"Kevin Lunny"
<kevin@drakesbayoyster.com>

07/13/2010 06:30 PM

To <Ben_Becker@nps.gov>

cc "Cicely Muldoon" <Cicely_Muldoon@nps.gov>, "'David M Weiman'" <agresources@erols.com>, "'Nancy Lunny'" <nancy@drakesbayoyster.com>, "'Tim Ragen'"

bcc

Subject Meeting Schedule

History: This message has been replied to.

Ben,

I would like to reschedule our meeting to discuss DBOC disturbances in Drakes Estero. I am happy to meet with you, but we have recently received new information regarding the oyster boat disturbances. I believe the issues involving the disputed NPS harbor seal disturbance data need to be resolved before we discuss how to move forward with analyzing those data.

Thank you,

Kevin

Ben Becker/PORE/NPS
07/13/2010 08:51 PM

To "Kevin Lunny" <kevin@drakesbayoyster.com>
cc "'David M Weiman'" <agresources@erols.com>, Ben_Becker@nps.gov, "Cicely Muldoon" <Cicely_Muldoon@nps.gov>, "'Nancy Lunny'"
bcc
Subject Re: Meeting Schedule

Hi Kevin,

I think we should still meet on Wednesday. Our meeting was not to discuss disturbances or how to analyze them. Rather, the meeting was to think about new ideas for measures of mariculture activity that you feel might be more appropriate than the annual DFG harvest metric.

So, please consider coming out. The meeting can be as short or long as you like, but I think it is important to move forward and discuss your perspective on these data sets and ways to potentially improve them.

You can let me know by email or leave me a message at 415-464-5247.

Thanks,

-Ben

Ben Becker, Ph.D.
Director and Marine Ecologist
Pacific Coast Science and Learning Center
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, CA 94956

tel: 415-464-5247
fax: 415-868-1202
ben_becker@nps.gov
http://home.nps.gov/pore/parkmgmt/pcslc.htm

The Pacific Coast Science and Learning Center is one of 19 Research Learning Centers at National Parks across the country working to increase the effectiveness and communication of research and science through:

· Facilitating the use of parks for scientific inquiry
· Supporting science-informed decision making
· Communicating relevance and providing access to research knowledge
· Promoting resource stewardship through partnerships

Ben,

I would like to reschedule our meeting to discuss DBOC disturbances in Drakes Estero. I am happy to meet with you, but we have recently received new information regarding the oyster boat disturbances. I believe the issues involving the disputed NPS harbor seal disturbance data need to be resolved before we discuss how to move forward with analyzing those data.

Thank you,

Kevin

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File No. 502976-0000

July 6, 2010

The Honorable Ken Salazar
Secretary
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Re: Special Use Permit for Drakes Bay Oyster Company

Dear Secretary Salazar:

I am writing to you on behalf of Kevin and Nancy Lunny ("the Lunnys"), owners of the Drakes Bay Oyster Company ("DBOC"), to request that you enable DBOC to continue to occupy and utilize the buildings and lands on the shores of Drakes Estero, located within Point Reyes National Seashore ("PRNS"), a unit of the National Park Service ("NPS").

DBOC is a family business operated by the Lunny family, fourth and fifth generation farmers and long-term Point Reyes residents who have lived at the historic "G" Ranch, overlooking Drakes Estero. Since acquiring the business in 2004, the Lunnys have been operating a sustainable, environmentally-friendly local business that provides jobs for the community and gives visitors to PRNS a valuable cultural and historic experience.

We were encouraged to hear of your recent statement at the Great Outdoors Conference that DBOC would continue to operate within PRNS. As you acknowledged, the oyster farm has existed in PRNS for many years. In fact, commercial oyster production has taken place within Drakes Estero for over seventy years—since the early 1930s, approximately three decades before Congress established PRNS in 1962. DBOC now produces both oysters and clams as part of its operations and is the last operating oyster cannery in the State of California.

As background, and as discussed in more detail below, DBOC operates under both State and Federal permits. With respect to the former, DBOC cultivates shellfish on the bottomlands in Drakes Estero pursuant to leases from the California Department of Fish and Game, which were renewed for 25 years in 2004, and thus expire in 2029. As to the latter, DBOC operates under a Reservation of Use and Occupancy ("RUO") executed in 1972 between NPS and the previous owners of the oyster farm and under several ancillary special use permits issued by NPS. The RUO and the other permits expire in 2012; however, the RUO contains a renewal

clause, which provides for the issuance of a special use permit that would "run concurrently with and...terminate upon expiration of the State water bottom allotments...."

Questions have been raised regarding the legal authority of NPS to issue a special use permit that would allow DBOC to continue operating past 2012, given that Drakes Estero was designated "potential wilderness" in 1976, pursuant to the Point Reyes Wilderness Act, Public Law 95-544. Notably though, the designation of Drakes Estero as "potential wilderness" was never meant to preclude the continued operations of DBOC. As is evident from relevant legislative history and environmental reviews, Drakes Estero was designated as "potential wilderness" rather than wilderness because of the understanding that oyster cultivation would continue, in light of California's retained interest in leasing the bottomlands for shellfish cultivation.

Moreover, and importantly, in October of 2009 Congress expressly authorized the Department of the Interior to issue DBOC a special use permit to continue its operations past 2012. As this letter describes, and given Congress's recent directive, there are multiple important reasons to issue such a permit, including the rich history of oyster farming in Drakes Estero and the myriad cultural, recreational, educational and ecological benefits DBOC provides.

I. RICH HISTORY OF MARICULTURAL OPERATIONS IN DRAKES ESTERO

Oyster farming has enjoyed a long history in Drakes Estero. The Miwok Indians were the original "oyster-farm operators," with their harvesting of native shellfish beginning thousands of years ago. In fact, their ancient oyster middens are still present in the estero. Commercial oyster farming began in the estero in the 1930s, with the original allotment recorded in the name of David C. Drier on January 18, 1934 for the purpose of growing oysters.[1] Although several transfers occurred during those early years, for most of its commercial history, the estero was farmed by Johnson's Oyster Company. In 2004, the Lunny family purchased the farm from Johnson's Oyster Company and have sought to adopt many of the same sustainable practices used by the Miwoks in order to conserve the important natural resources of the area.

This long history of maricultural operations has been routinely recognized as a valid and important use of Drakes Estero. The legislative history of the Point Reyes National Seashore Act, for example, is replete with references to both the history and legacy of oyster farming and the important benefits it provides to PRNS. For instance, during congressional hearings on the establishment of PRNS, former NPS Director Conrad Wirth explained that the "[e]xisting commercial oyster beds and an oyster cannery at Drakes Estero...should continue under national seashore status because of their public values. The culture of oysters is an interesting and unique industry which presents exceptional educational opportunities for introducing the public, especially students, to the field of marine biology."[2] Comments made during the Senate hearings

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[1] *See* NPS, Environmental Assessment/Initial Study Joint Document, Johnson Oyster Company, Marin County, Point Reyes National Seashore, at 8 (May 1998).

[2] NPS, Conrad L. Wirth, Director, Report on the Economic Feasibility of the Proposed Point Reyes National Seashore at 20 (1961), included in the Hearings Before the Subcommittee on Public Lands of the Committee on

on the proposed PRNS legislation echoed this view: "[t]his proposed legislation provides a balanced use between the public and private interests concerned [because] the oyster and commercial fisheries would be able to continue operation and provide both recreation and economic value to the seashore."[3]

In the early 1970s, when Congress began considering designating wilderness areas within PRNS, the importance of the oyster operations was affirmed. Senator John Tunney, who introduced the PRNS wilderness legislation, reiterated that "[e]stablished private rights of landowners and leaseholders will continue to be respected and protected. The existing agriculture and aquaculture uses can continue."[4] Similarly, Representative John Burton underscored that the legislation's intent was to "preserve the present diverse uses of the Seashore," including the commercial oyster operations in Drakes Estero.[5] The Department of Interior itself recommended that an express wilderness designation would be inappropriate: "Commercial oyster farming operations take place in this estuary and the reserved rights by the State on tidelands in this area make this acreage inconsistent with wilderness."[6]

Until very recently, NPS consistently agreed with these conclusions and appeared supportive of the continued use of Drakes Estero for maricultural operations. The RUO itself, for example, contains a renewal clause, which provides that "[u]pon expiration of the reserved term, a special use permit may be issued for the continued occupancy of the property...."[7]

Additionally, in the Final Environmental Impact Statement prepared by NPS evaluating the potential impacts associated with designating certain PRNS lands as wilderness, NPS discussed the "oyster-farm operation" and noted that while removing the oyster farm might remove human activities from the estero, there would be a "loss of some compensating values. Besides its economic benefits to the community, the farm has decided interpretive importance as a popular 'living exhibit,' where visitors have the unique opportunity to observe the operation

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Interior and Insular Affairs, U.S. Senate, 87th Congress, First Session on S.486, A Bill to Establish The Point Reyes National Seashore in the State of California and for Other Purposes (Mar. 28, 29, and 31, 1961).

3 Hearings Before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs, U.S. Senate, 87th Congress, First Session on S.476, A Bill to Establish The Point Reyes National Seashore in the State of California and for Other Purposes at 17 (Mar. 28, 29, and 31, 1961).

4 Hearings on S.1093 and S.2472 Before the Subcommittee on Parks and Recreation of the Committee on Interior and Insular Affairs, 94th Cong. 271 (1976).

5 *Id.* at 272-73.

6 Letter dated September 8, 1976, from John Kyl, Assistant Secretary of the Interior, to U.S. Representative James A. Haley, Chairman, Committee on Interior and Insular Affairs, House of Representatives, U.S. House Report No. 94-1680, 94 U.S. Code and Congressional News 5593.

7 JOC Grant Deed to the United States, Exh. C, § 11 (Nov. 9, 1972). The clause, in fact, only requires that the special use permit "run concurrently with and will terminate upon the expiration of the State water bottom allotments...." Those "State water bottom allotments" refer to a renewable lease issued by the California Department of Fish and Game, which has granted DBOC the right to cultivate oysters in Drakes Estero through 2029. California Department of Fish & Game Amendment No. 2 to Indenture of Lease, M-438-01 (Dec. 2, 2005). Accordingly, issuance of a SUP that would "run concurrently with" the State water bottom allotments would be consistent with the state authorizations and would allow the oyster farm to continue operating through 2029.

and to purchase freshly grown oysters. These are appropriate purposes at Point Reyes, a recreational-category park."[8]

NPS continued to recognize the value of the oyster operations in its 1980 PRNS General Management Plan (still in effect), which includes the following management objectives: "[t]o monitor and improve maricultural operations, in particular the oyster farm operation in Drakes Estero," and "[t]o monitor and support productive land uses and activities [including maricultural activities] which are consistent with historic patterns."[9] As recently as 1998, NPS conducted an environmental assessment pursuant to the National Environmental Policy Act ("NEPA") of the potential impacts of improving and substantially expanding the oyster farm operations. Although the planned expansion did not take place because of funding shortfalls, NPS' support of the project demonstrates the agency's recognition that oyster farm operations are a valid use of PRNS land.[10]

II. DBOC IS A BENEFICIAL USE OF PRNS

Recently, some questions have been raised regarding the types of environmental impacts oyster farming may be having on Drakes Estero. In 2006 and 2007, for example, PRNS staff prepared and released several versions of a report entitled *Drakes Estero: A Sheltered Wilderness Estuary* that purported to evaluate the impacts of DBOC on Drakes Estero and erroneously concluded that oyster farming is having an adverse ecological impact on PRNS resources. This effort to portray DBOC as having detrimental impacts appeared to be part of an attempt to "eliminate" DBOC as a "non conforming use" so that Drakes Estero and the surrounding tract of land could be converted to wilderness status. Indeed, PRNS staff took the position that they were legally precluded from issuing a special use permit to DBOC to extend operations past 2012 because of the "potential wilderness" designation.[11] However, there is no such restriction on NPS' authority.[12] Moreover, NPS has allowed non conforming uses in other potential wilderness areas.[13]

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8 *See* NPS, Final Environmental Statement FES 74-18, Proposed Wilderness; Point Reyes National Seashore, California, at 56 (Apr. 23, 1974).

9 NPS, General Management Plan: Point Reyes National Seashore, at 2-3 (Sept. 1980).

10 *See, e.g.*, Letter from Don Neubacher, Superintendent, PRNS, to Bank of Oakland (Nov. 22, 1996) (explaining the relationship between the oyster farm and NPS and noting that NPS is "genuinely excited about the planned changes" to the oyster farm and "pledge[s] to work with the Johnsons and the Bank of Oakland to make the project successful"); *see also* Thomas Yeatts, Point Reyes Light, *Park Planned Big New Oyster Plant* (Aug. 2, 2008) (documents obtained by the newspaper indicate that, beginning in 1996, "Point Reyes National Seashore (PRNS) staff developed a plan to renovate the Johnson Oyster Company's rickety buildings and septic system, and proposed new two-story development").

11 *See, e.g.*, Field Solicitor Opinion Re: Point Reyes Wilderness Act (Feb. 26, 2004) (concluding that the Wilderness Act, the Point Reyes Wilderness Act, and NPS Management Policies mandate that NPS convert potential wilderness, such as Drakes Estero, to wilderness status "as soon as the non conforming use can be eliminated").

12 For clarification, we disagree with NPS' legal interpretation that any law precludes the agency from allowing DBOC to continue operating past 2012. There is no mandate found in any applicable law or guidance that

From the outset it should be noted that since purchasing the farm in 2004, the Lunnys have dedicated significant time and resources to cleaning up the oyster farm and resolving past violations of law that had occurred during their predecessor's operations. *See, e.g.*, Peter Jamison, Point Reyes Light, *Park Service to Close Historic Oyster Farm* (June 15, 2007) (discussing DBOC's cleanup and quoting PRNS spokesman John Dell'Osso, "Kevin [Lunny] has done a fantastic job of cleaning up. Everything we've asked him to do, he's done."). The Lunnys remain committed to continuing those cleanup efforts and ensuring that DBOC is operated in a sustainable, environmentally-friendly manner.[14] As such, the family—along with their many supporters in western Marin County environmental and agricultural circles—was disheartened by the NPS report, which appeared to, among other things, overlook the many beneficial effects of oyster culture operations on the environment.[15]

In order to help resolve the debate regarding the scope of impacts of DBOC and the availability of scientific analysis, the National Academy of Sciences ("NAS") agreed to help clarify the scientific issues regarding maricultural activities and produced two reports. The first report, which was released in May of 2009, assessed the adequacy of the claimed scientific bases for NPS staff's preliminary conclusions in their Drakes Estero reports, and evaluated the

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would require NPS to convert "potential wilderness" to wilderness on a particular timetable. The Wilderness Act, for example, does not use the phrase "potential wilderness," much less define when "potential wilderness" must become actual wilderness, if ever. NPS management policies, director's orders, and reference manuals are all silent with respect to a specific timetable for conversion and only provide that, once "non conforming uses" have ceased, NPS will publish a Federal Register notice to change the designation from potential wilderness to wilderness. *See* NPS Reference Manual #41 at Appendix H, Wilderness Preservation and Management (1999). There is no requirement, however, mandating that NPS ensure that such operations cease by a certain date, and there has been no environmental review of the impact of removing the oyster cultivation operation in Drakes Estero.

[13] Examples of non conforming uses that NPS has allowed in other potential wilderness areas include: i) operation of motorized boats in potential wilderness areas of Grand Canyon National Park; ii) public use of Five High Sierra camps and the Ostrander ski hut in potential wilderness areas of Yosemite Valley; iii) operation by Southern California Edison of hydroelectric dams in potential wilderness areas of Sequoia-Kings Canyon National Park; and iv) use of roads in Cumberland National Seashore located in potential wilderness. As discussed below, the oyster farm provides greater cultural, recreational, educational and ecological benefits than these examples of non conforming uses.

[14] Prior to the Lunny family's ownership, the oyster farm had suffered from a degree of deterioration that led to a number of violations of law, including the Coastal Development Act, and enforcement actions by the California Coastal Commission ("CCC"). The Lunnys are working with the CCC to resolve those violations and ensure that DBOC's operations fully comply with all applicable local, state, and federal regulations. Additionally, an incident recently occurred at the farm in which clam-growing equipment was inadvertently placed into a Harbor Seal Protection Area. The Lunnys immediately took steps to rectify this mistake and are implementing processes to ensure that such mistakes do not occur in the future. Moreover, many of NPS' allegations that the oyster farm adversely impacts harbor seals have since been retracted at very recent Marine Mammal Commission ("MMC") hearings. Like the NAS, the MMC has become involved specifically to resolve the debate surrounding the oyster farm's impact on harbor seals. The MMC has held a series of panel hearings, and is working on a report that is due out in the near future.

[15] The Department of Interior's Inspector General investigated the various versions of the NPS Report and found that scientific inaccuracies undermined NPS' conclusions regarding the oyster farm's ecological impact on Drakes Estero.

available data specifically regarding the impact of DBOC's maricultural activities.[16] The second report, which was released in February of 2010, broadly addresses best management practices and performance standards to enhance the overall benefits of shellfish mariculture and minimize any negative ecological effects.[17]

The first NAS report reasonably concluded that "there is a lack of strong scientific evidence that shellfish farming has major adverse ecological effects on Drakes Estero at the current (2008-2009) levels of production and under current (2008-2009) operational practices, including compliance with restrictions to protect eelgrass, seals, water-birds, and other natural resources." NAS 2009 Report at 6. The report goes on to discuss some of the over-looked beneficial effects that DBOC is having on the estero, including: (i) the potential that oyster culture in Drakes Estero is replacing the important "filtering capacity and biogeochemical processing that was lost in the mid-19th century and subsequent decades with the overharvest and functional elimination of the native Olympia oyster" (*id.* at 68); (ii) the possible beneficial effects on eelgrass in the area, given that eelgrass has approximately doubled in Drakes Estero from 1991 to 2007 (*id.*); (iii) the positive economic impact for the region—including employment, tax revenue, and local food production (*id.* at 64); and (iv) the positive visitor experience, given that DBOC "preserves a piece of local and regional culture and history" (*id.* at 65).

As noted above, the oyster farm provides significant ecological benefits to Drakes Estero. DBOC's oysters are helping to "restor[e] an historic baseline ecosystem" by acting as a proxy for native oysters. *Id.* at 22; *see also* NAS 2010 Report at 13-14. The oysters are also known as "ecosystem engineers" and "foundation species" (NAS 2009 Report at 18) that bolster the ecosystem's resilience against abnormal events like phytoplankton blooms or sedimentation from storm water run-off (*id.* at 22, 23).[18]

In addition to the work done by the oysters, the Lunnys themselves are committed to conserving and protecting PRNS. For example, DBOC is the only oyster farm in California to produce and hatch its own seeds on site, greatly reducing the risk of introducing contaminants and invasive species. And it employs an environmentally-friendly off-bottom "hanging culture" method, used by less than 5% of U.S. oyster farmers due to the labor-intensive hand harvesting required. The Lunnys are also dedicated to educating others about conservation and the environment. The oyster farm offers free tours to the public to inform them about the history of oyster farming in PRNS, oysters' value as a beneficial source of protein, coastal ecosystems, and the nature and efficacy of organic sustainable farming. Similarly, the oyster farm offers its

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16 *See* National Academy of Sciences, National Research Council, Shellfish Mariculture in Drakes Estero, Point Reyes National Seashore, California (2009) ("NAS 2009 Report").

17 *See* National Academy of Sciences, National Research Council, Ecosystem Concepts for Sustainable Bivalve Mariculture (2010) ("NAS 2010 Report").

18 The second NAS report provides further detailed discussion of the general ecosystem services that bivalves perform. NAS 2010 Report at 10-11. In fact, these ecosystem services are so significant that the report recommends quantifying their economic value, as well as developing policies to encourage restoration of bivalves in more ecosystems so they can improve and benefit from these services. *See id.*

facilities to researchers and participates in research on native oysters, estuarine biodiversity, and human health protection.

For all these reasons, many of PRNS' 2.5 million annual visitors flock to DBOC, which carries on the long-standing tradition of oyster farming in Drakes Estero and remains as the last operating oyster cannery in the State. With its cultural, recreational, educational and ecological benefits, the oyster farm undoubtedly "enhances visitors' experience in the estero." *Id.* at 65.

By contrast, should the oyster farm be shut down, the community would be adversely impacted in significant ways. Not only would PRNS lose the numerous visitors for whom DBOC is a destination, but the oyster farm employees who have specialized skills would lose their livelihood, and the low-income housing that DBOC provides for their employees would be demolished. This in turn would effect the local ranches, where many of DBOC's employees' family members work. Furthermore, removing the oysters could have an adverse effect on the Drakes Estero ecology, including its water quality.

Both NAS reports ultimately affirm that there is no ecological justification to deny DBOC a special use permit. And given that Congress has expressly authorized NPS to issue a special use permit, there is no legal justification either. NPS should issue DBOC a special use permit to continue its operations past 2012.[19]

III. NPS AUTHORITY TO ISSUE A SPECIAL USE PERMIT FOR CONTINUED OPERATIONS PAST 2012

In October of 2009, Congress provided a definitive answer to the legal question of whether NPS has the authority to issue a special use permit to DBOC to continue operating past 2012. The answer was a resounding yes.

Specifically, Congress directed that:

> Prior to the expiration on November 30, 2012 of the Drake's Bay Oyster Company's Reservation of Use and Occupancy and associated special use permit ('existing authorization') within Drake's Estero at Point Reyes National Seashore, notwithstanding any other provision of law, the Secretary of the Interior *is authorized to issue a special use permit with the same terms and conditions as the existing authorization*, except as provided herein, for a period of 10 years from November 30, 2012: Provided, That such extended authorization is subject to annual payments to the United States based on the fair market value of the use of the Federal property for the duration of such renewal. The Secretary shall take

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[19] As you know, Senator Dianne Feinstein contacted you when the first NAS report was issued and expressed her concern that NPS had "exaggerated the effects of the oyster population on the Estero's ecosystem" and appeared to be continuing to ignore the potential beneficial impacts of maricultural operations. *See* Letter from Dianne Feinstein to the Honorable Ken Salazar (May 5, 2009). We agree with Sen. Feinstein's conclusion that the NAS report "does not present any compelling ecological reason for refusing to renew the Drakes Bay Oyster Company lease in 2012."

LATHAM&WATKINS LLP

> into consideration recommendations of the National Academy of Sciences Report pertaining to shellfish mariculture in Point Reyes National Seashore before modifying any terms and conditions of the extended authorization.

Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-88 § 124 (2009) (emphasis added).

As such, now that the second NAS report has been issued, DBOC respectfully requests that NPS provide a proposed special use permit to DBOC incorporating the same terms and conditions under which DBOC currently operates, including an appropriate annual fee.

Thank you very much for your attention to this matter. We understand that Will Shafroth, Deputy Assistant Secretary for Fish, Wildlife and Parks, recently visited DBOC on February 4, 2010. The Lunnys would be happy to host you, Secretary Salazar, and any other interested Department of Interior officials on a tour of the oyster farm, and/or provide any follow-up information requested. We look forward to meeting with you and your staff to discuss this matter in further detail, and will be in touch to set this up. If you have any questions or would like additional information, please do not hesitate to reach me at (415) 395-8136.

Best regards,

Karl Lytz M.B.

Karl S. Lytz
of LATHAM & WATKINS LLP

cc: The Honorable Dianne Feinstein
Will Shafroth, Deputy Assistant Secretary for Fish, Wildlife and Parks
Jonathan Jarvis, Director, National Park Service
George Turnbull, Acting Regional Director, Pacific West Region, National Park Service
Cicely Muldoon, Superintendent, Point Reyes National Seashore

SF\755222.5

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1209
kevin@drakesbayoyster.com
nancy@drakesbayoyster.com

COPY

July 1, 2010

Dear Secretary Salazar,

We were heartened and gratified to hear your recent statement at the Great Outdoors Conference about our family being able to continue to operate the Drakes Bay Oyster Farm. We can relate to your story about growing upon a ranch, working the fields, tending cattle, and believing in the stewardship and conservation values that have been passed on by American farmers. We feel the same way.

When Kevin was growing up on a ranch overlooking Drakes Estero, the oyster farm was a fixture in the West Marin and Point Reyes Station communities. As an animal science major in college, Kevin took a course in aquaculture. Years later, our family was privileged to acquire the oyster farm. The oyster farm is compatible with our commitment to practicing sustainable agriculture. For example, we were the first Point Reyes National Seashore ranch to raise certified grass fed and organic beef, and our land management practices are certified by Salmon Safe.

We have poured our time, money and hearts into turning the oyster farm around, correcting at great expense a number of environmental problems that had developed during the years prior to our involvement. Working with others in the field and the California Department of Fish and Game, we have developed new methods for raising spat (young oysters) at the facility to reduce the likelihood of harmful nonnative species infiltrating Drakes Estero. We've also donated oyster shells to aid in restoration of San Francisco Bay.

This year's appropriation bill for the Department of the Interior states that you are authorized to extend our use of the shoreside facilities needed to support the offshore cultivation of shellfish, which is done pursuant to leases with the California Department of Fish and Game that expire in 2029. People who value mariculture are rallying around the oyster farm in support of realizing the "Drakes Estero Mariculture Interpretive Center" suggested in National Research Council study of the impact of our farm on the Estero. Your extending our lease is pivotal to making this vision a reality.

You are in our thoughts and have our heartfelt sympathy as you deal with the tragic environmental disaster in the Gulf of Mexico. While we would like to meet with you personally to discuss the future of the oyster farm, we understand that may not be realistic at this moment. In the alternative, our attorneys at Latham & Watkins LLP and we would appreciate an early opportunity to sit down with a senior member of your staff to discuss the future of the oyster farm in Drakes Estero.

Sincerely,

Kevin Lunny

Nancy Lunny

"Kevin Lunny"
<kevin@drakesbayoyster.com>

04/02/2010 12:30 MST

To: <Dave_Press@nps.gov>
cc: <Sarah_Allen@nps.gov>, <John_A_Dell'Osso@nps.gov>, <Natalie_Gates@nps.gov>, <David_Graber@nps.gov>, <George_Turnbull@nps.gov>, "'Cassidy Teufel'"
Subject: RE: Drakes Estero Seal Protection Areas

Dave,

Thank you for the reply. I was hoping to work with a NPS GIS person, but we will hire a private GIS consultant to help us with this. We are planning to do some survey work next week. Perhaps the same people can help us with this work.

I certainly understand that you would not want to make any changes at this point. I was really making the point that we still need to have access past these areas. I know that the CCC created them knowing that we would still operate around them - there may be no adjustment required at all. I agree that we should get all of the information together first and then take a look.

I will contact you when we have the GIS work completed.

Thank you,

Kevin

-----Original Message-----
From: Dave_Press@nps.gov [mailto:Dave_Press@nps.gov]
Sent: Friday, April 02, 2010 11:26 AM
To: Kevin Lunny
Cc: Sarah_Allen@nps.gov; John_A_Dell'Osso@nps.gov; Natalie_Gates@nps.gov; David_Graber@nps.gov; George_Turnbull@nps.gov
Subject: Re: Drakes Estero Seal Protection Areas

Hi Kevin,

Thanks for your inquiry. Neither Sarah nor I are able to assist you with any changes to the harbor seal protection areas. Any amendments will have to be discussed with the California Coastal Commission and NPS representatives out of the regional office. Any changes prior to the final report from the Marine Mammal Commission would of course be premature.

As for GIS assistance, I do think it is important for you to have the most accurate information possible. I am not comfortable providing this support. However, I can consult with the regional office to see what help we can provide and when.

Lastly, I strongly encourage you to seek professional assistance from a GIS consultant on these matters. I recognize that the boundaries that you need to be aware of while in the field are not easy to recognize. I think your best option is to use GPS units with all relevant data layers loaded in so that your staff can literally see on the screen where they are in relation to your lease boundary, harbor seal protection zones, etc. A GIS consultant can help you set something like this up, and we would be able to assist with providing some of the data layers.

Best regards, Dave

David Press
Ecologist / Data Manager

San Francisco Area Network
Inventory and Monitoring Program
415-331-0168
415-331-5530 (FAX)

"Kevin Lunny" <kevin@drakesbayoyster.com>

04/01/2010 08:01 MST

To: <Sarah_Allen@nps.gov>, <Dave_Press@nps.gov>

cc:

Subject: Drakes Estero Seal Protection Areas

Good morning Sarah and Dave,

I think we have figured out how to get the prohibited areas to show up on our GPS screens. As we discussed, this would offer another level of security - the boat operators would "know" if they're getting close to a protected area. I have attached a map showing the two prohibited areas. In that map, I have given each angle point a number. Would you please provide us with the coordinates for each of these points? We don't have the capability of determining the coordinates.

I have a couple of questions / observations:

1. Line 2-3 should be placed so that the channel is outside the protection area so that oyster boats may use the channel.
2. Line 8-9-10 should be placed so that the channel is outside the protection area so that oyster boats may use the channel.
3. Line 13-14 should be directly on top of the southernmost aquaculture lease line.
4. Move point 4 north east, towards point 5, enough so that the channel from Bull Point to the main channel can be used by oyster boats.

Is this something you could help us with?

Thank you,

Kevin

[attachment "20100401 Prohibited Area Coordinate Request.pdf" deleted by Dave Press/GOGA/NPS]

Sarah Allen/PORE/NPS
04/02/2010 10:57 AM

To "Kevin Lunny" <kevin@drakesbayoyster.com>
cc "'Diane Windham'" <Diane.Windham@NOAA.GOV>, John_A_Dell'Osso@nps.gov, "'Kirsten Ramey'" <KRAMEY@dfg.ca.gov>, Natalie_Gates@nps.gov, "'Tim
bcc Sarah Allen/PORE/NPS
Subject RE: Drakes Estero Work Group

Hi Kevin:

Yes, small is good - I also think that the Coastal Commission might want to be involved.
Thanks

Sarah

Sarah G. Allen, PhD
Senior Science Advisor
Point Reyes National Seashore
Point Reyes Station, CA 94956
415-464-5187

"Kevin Lunny" <kevin@drakesbayoyster.com>

"Kevin Lunny"
<kevin@drakesbayoyster.com>
04/02/2010 09:48 AM

To <Sarah_Allen@nps.gov>
cc "'Diane Windham'" <Diane.Windham@NOAA.GOV>, "'Kirsten Ramey'" <KRAMEY@dfg.ca.gov>, "'Tim Ragen'" <tragen@mmc.gov>, <Natalie_Gates@nps.gov>, <John_A_Dell'Osso@nps.gov>
Subject RE: Drakes Estero Work Group

Sarah,

No problem - I'm happy to help. These are the same agencies that were involved to create the 1992 seal protection protocols. It seems reasonable to include these same agencies to improve upon the management practices. It also seems as though the work group should be kept as small as possible - for a number of reasons.

I look forward to working with Natalie as well.

Thank you,

Kevin

-----Original Message-----
From: Sarah_Allen@nps.gov [mailto:Sarah_Allen@nps.gov]
Sent: Thursday, April 01, 2010 4:46 PM
To: Kevin Lunny
Cc: 'Diane Windham'; 'Kirsten Ramey'; 'Tim Ragen'; Natalie_Gates@nps.gov; John_A_Dell'Osso@nps.gov

Subject: Re: Drakes Estero Work Group

Hi kevin:

I am pleased to see that you have pulled these other agencies into the working group. For the NPS representative, though, Natalie Gates is likely the better representative. She is the new Chief of Natural Resources and handles all of the natural resource management issues. You can be assured, though, that I will continue to be involved and advise on harbor seal biology.

Thanks for helping this move forward.

Sarah

Sarah G. Allen, PhD
Senior Science Advisor
Point Reyes National Seashore
Point Reyes Station, CA 94956
415-464-5187

"Kevin Lunny"
<kevin@drakesbay
oyster.com>

04/01/2010 08:46
AM

To
<Sarah_Allen@nps.gov>, "'Diane
Windham'" <Diane.Windham@NOAA.GOV>,
"'Kirsten Ramey'"
<KRAMEY@dfg.ca.gov>

cc
"'Tim Ragen'" <tragen@mmc.gov>

Subject
Drakes Estero Work Group

Hi Sarah,

I spoke with Diane Windham about the small work group that we agreed upon during the Marine Mammal Commission meeting. Diane has agreed to work with the group as the NOAA contact. Kirsten Ramey has agreed to represent CDFG.

I think that we (NPS and DBOF) can make some more progress before engaging the larger group. We can work together to plan how to structure the larger group meetings. Tim Ragen has also offered his assistance if you think it would be helpful.

Thank you,

Kevin

(See attached file: Diane_Windham.vcf)(See attached file: Kirsten Ramey.vcf)

"Kevin Lunny"
<kevin@drakesbayoyster.com>

04/02/2010 09:48 AM

To <Sarah_Allen@nps.gov>

cc '"Diane Windham" <Diane.Windham@NOAA.GOV>, '"Kirsten Ramey" <KRAMEY@dfg.ca.gov>, '"Tim Ragen" <tragen@mmc.gov>, <Natalie_Gates@nps.gov>,

bcc

Subject RE: Drakes Estero Work Group

History: This message has been replied to.

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From: Sarah_Allen@nps.gov [mailto:Sarah_Allen@nps.gov]
Sent: Thursday, April 01, 2010 4:46 PM
To: Kevin Lunny
Cc: 'Diane Windham'; 'Kirsten Ramey'; 'Tim Ragen'; Natalie_Gates@nps.gov; John_A_Dell'Osso@nps.gov
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Sarah G. Allen, PhD
Senior Science Advisor
Point Reyes National Seashore
Point Reyes Station, CA 94956
415-464-5187

"Kevin Lunny"
<kevin@drakesbay
oyster.com>

To

04/01/2010 08:46 AM

<Sarah_Allen@nps.gov>, "'Diane Windham'" <Diane.Windham@NOAA.GOV>, "'Kirsten Ramey'" <KRAMEY@dfg.ca.gov>

cc

"'Tim Ragen'" <tragen@mmc.gov>

Subject

Drakes Estero Work Group

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Kevin

(See attached file: Diane_Windham.vcf)(See attached file: Kirsten Ramey.vcf)

"Kevin Lunny" <kevin@drakesbayoyster.com>

04/01/2010 08:46 AM

To <Sarah_Allen@nps.gov>, "'Diane Windham'" <Diane.Windham@NOAA.GOV>, "'Kirsten Ramey'" <KRAMEY@dfg.ca.gov>

cc "'Tim Ragen'" <tragen@mmc.gov>

bcc

Subject Drakes Estero Work Group

History: This message has been replied to.

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Thank you,

Kevin

Diane_Windham.vcf Kirsten Ramey.vcf

"Kevin Lunny"
<kevin@drakesbayoyster.com>
04/01/2010 08:01 AM

To <Sarah_Allen@nps.gov>, <Dave_Press@nps.gov>
cc
bcc
Subject Drakes Estero Seal Protection Areas

History: This message has been forwarded.

Good morning Sarah and Dave,

I think we have figured out how to get the prohibited areas to show up on our GPS screens. As we discussed, this would offer another level of security – the boat operators would "know" if they're getting close to a protected area. I have attached a map showing the two prohibited areas. In that map, I have given each angle point a number. Would you please provide us with the coordinates for each of these points? We don't have the capability of determining the coordinates.

I have a couple of questions / observations:

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4. Move point 4 north east, towards point 5, enough so that the channel from Bull Point to the main channel can be used by oyster boats.

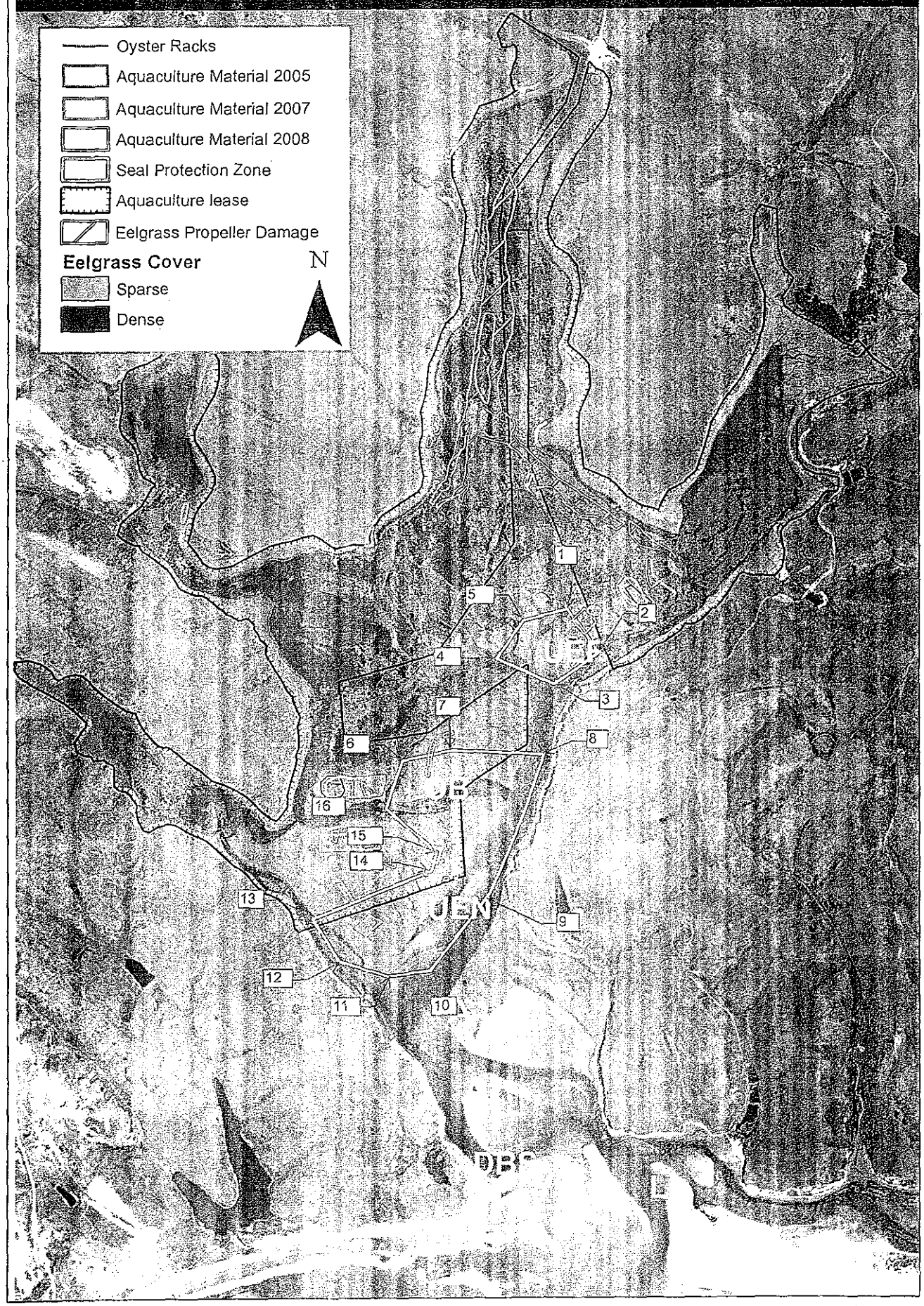
Is this something you could help us with?

Thank you,

Kevin

20100401 Prohibited Area Coordinate Request.pdf

Drake's Estero Aquaculture and Seal Habitat



"Kevin Lunny"
<kevin@drakesbayoyster.com>
03/29/2010 01:59 PM

To "John A Dell'Osso" <John_A_Dell'Osso@nps.gov>
cc <Sarah_Allen@nps.gov>
bcc
Subject FW: "A Growing Relationship: Parks and Aquaculture"

I forgot to copy Sarah...

-----Original Message-----
From: Kevin Lunny [mailto:kevin@drakesbayoyster.com]
Sent: Monday, March 29, 2010 1:56 PM
To: John A Dell'Osso (John_A_Dell'Osso@nps.gov)
Subject: FW: "A Growing Relationship: Parks and Aquaculture"

John,

Are you aware of this webinar? I have registered and will be participating. Will anyone from PRNS be joining?

Kevin

-----Original Message-----
From: Laura Hoberecht [mailto:Laura.Hoberecht@noaa.gov]
Sent: Friday, March 26, 2010 5:57 PM
To: robindowney@pcsga.org
Cc: T Diane Windham
Subject: "A Growing Relationship: Parks and Aquaculture"

Hi Robin,

Curious if PCSGA is involved with this event?

https://www2.gotomeeting.com/register/697859435

Your input is appreciated!

Have a great weekend,

Laura

--
><> ><> ><> ><> ><> ><> ><> ><> ><> ><> ><> <><
Laura Hoberecht, PhD
Fishery Biologist
Habitat Conservation Division
National Marine Fisheries Service
777 Sonoma Ave, Rm 325
Santa Rosa, CA 95404
phone: 707-575-6056
fax: 707-578-3435
email: Laura.Hoberecht@noaa.gov

"Kevin Lunny"
<kevin@drakesbayoyster.com>

03/24/2010 10:04 AM

To <Sarah_Allen@nps.gov>
cc <David_Schifsky@nps.gov>
bcc
Subject RE: FW: Kayakers are still coming to the farm

Thank you.

-----Original Message-----
From: Sarah_Allen@nps.gov [mailto:Sarah_Allen@nps.gov]
Sent: Wednesday, March 24, 2010 9:49 AM
To: Kevin Lunny
Cc: David_Schifsky@nps.gov
Subject: Re: FW: Kayakers are still coming to the farm

Hi Kevin:

I am passing along your email to David Schifsky who is the new Chief Ranger and he can address your questions. He is the person you can contact in the future about any of these sorts of questions. Thanks for bringing this to our attention.

Best regards,

Sarah

Sarah G. Allen, PhD
Senior Science Advisor
Point Reyes National Seashore
Point Reyes Station, CA 94956
415-464-5187

"Kevin Lunny"
<kevin@drakesbayoyster.com>

03/23/2010 03:16 PM

To <Sarah_Allen@nps.gov>
cc "'Ginny Cummings'" <ginny@drakesbayoyster.com>
Subject FW: Kayakers are still coming to the farm

Hi Sarah,

We are often telling people with kayaks during pupping season that they are not allowed in Drakes Estero during this season. This situation (below) is common: didn't know about the closure and didn't see the sign. We don't mind telling people about the closure, but occasionally they make it into the estero before we spot them.

Do you think that a bigger sign at the launching site would be helpful? Maybe even a rope across the opening from the parking lot to the water's edge as an extra reminder?

My sister Ginny and my daughter Brigid are willing to keep up the watch, but it is sometime hard to deliver the bad news to a visitor that has their heart set on a kayak trip into the estero.

Kevin

From: Ginny Cummings [mailto:ginny@drakesbayoyster.com]
Sent: Tuesday, March 23, 2010 12:46 PM
To: 'Kevin Lunny'
Subject: Kiyakers are still coming to the farm

Hey Kev:
Brig and I just went out to inform another couple of kayakers who traveled from Trinity to kayak today.and they shared that they saw no where on the NPS website the closure dates. The signage here is pretty poor and these two guys did not even see it until we pointed it out. What do you think.should I call someone at headquarters and suggest better, more obvious signage or let these occurrences happen? The only sign is a page-size note indicating closure dates and cites the federal law and that a fine will be levied..what's your thought? It's the unfortunate visitor I feel badly about.

Ginny

Sarah Allen/PORE/NPS
03/24/2010 09:48 AM

To "Kevin Lunny" <kevin@drakesbayoyster.com>
cc David Schifsky/PORE/NPS@NPS
bcc Sarah Allen/PORE/NPS
Subject Re: FW: Kayakers are still coming to the farm

Hi Kevin:

I am passing along your email to David Schifsky who is the new Chief Ranger and he can address your questions. He is the person you can contact in the future about any of these sorts of questions. Thanks for bringing this to our attention.

Best regards,

Sarah

Sarah G. Allen, PhD
Senior Science Advisor
Point Reyes National Seashore
Point Reyes Station, CA 94956
415-464-5187

"Kevin Lunny" <kevin@drakesbayoyster.com>

"Kevin Lunny" <kevin@drakesbayoyster.com>
03/23/2010 03:16 PM

To <Sarah_Allen@nps.gov>
cc "'Ginny Cummings'" <ginny@drakesbayoyster.com>
Subject FW: Kayakers are still coming to the farm

Hi Sarah,

We are often telling people with kayaks during pupping season that they are not allowed in Drakes Estero during this season. This situation (below) is common: didn't know about the closure and didn't see the sign. We don't mind telling people about the closure, but occasionally they make it into the estero before we spot them.

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Ginny

"Kevin Lunny" <kevin@drakesbayoyster.com>

03/23/2010 03:16 PM

To <Sarah_Allen@nps.gov>

cc "'Ginny Cummings'" <ginny@drakesbayoyster.com>

bcc

Subject FW: Kayakers are still coming to the farm

History: This message has been replied to.

Hi Sarah,

We are often telling people with kayaks during pupping season that they are not allowed in Drakes Estero during this season. This situation (below) is common: didn't know about the closure and didn't see the sign. We don't mind telling people about the closure, but occasionally they make it into the estero before we spot them.

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Ginny

"Kevin Lunny"
<kevin@drakesbayoyster.com>
03/01/2010 11:02 AM

To <Sarah_Allen@nps.gov>
cc
bcc
Subject RE: Meeting

History: This message has been replied to.

Your office is fine. Where exactly are you located?

Kevin

-----Original Message-----
From: Sarah_Allen@nps.gov [mailto:Sarah_Allen@nps.gov]
Sent: Monday, March 01, 2010 8:36 AM
To: Kevin Lunny
Subject: RE: Meeting

Hi:

My office is fine if that is not too much driving for you. I gladlycan meet you part way at Priscilla's if that is easier. My cellphone is (b) (6) [redacted].

Sarah

Sarah G. Allen, PhD
Senior Science Advisor
Point Reyes National Seashore
Point Reyes Station, CA 94956
415-464-5187

"Kevin Lunny"
<kevin@drakesbayoyster.com>
02/28/2010 11:30 AM

To <Sarah_Allen@nps.gov>
cc
Subject RE: Meeting

Sarah,

Thank you for making the time - we can keep it short. Lunch on Monday is perfect. Where should we meet? I'm happy to come to your office if it is

easier for you.

Kevin

-----Original Message-----
From: Sarah_Allen@nps.gov [mailto:Sarah_Allen@nps.gov]
Sent: Friday, February 26, 2010 9:48 AM
To: Kevin Lunny
Subject: RE: Meeting

Hi Kevin:

I just am getting to my email now and so am sorry not to respond sooner. I am here all day today but likely will leave before 4PM because I am coming back tomorrow. If you would like to come in today, we can sit down for a few minutes. Saturday,we are giving the class, I will forward the agenda to you for your interest. Monday is taken up with many meetings, although we could talk over lunch at @ 12:00. I have a meting at 1PM. Would that work? I appreciate your persistence.

Here is my cellphone if you wish to connect sooner (b) (6) [redacted])

Best regards,

Sarah

Sarah G. Allen, PhD
Senior Science Advisor
Point Reyes National Seashore
Point Reyes Station, CA 94956
415-464-5187

"Kevin Lunny" <kevin@drakesbayoyster.com>		To
02/25/2010 06:44 PM	<Sarah_Allen@nps.gov>	cc
		Subject
	RE: Meeting	

Sarah,

I would really like to meet with you, even if only for a few minutes, either
tomorrow or Monday. I would like to call Tim Ragen on Monday to tell him that you and I have already had our first meeting. There is no agenda necessary for this first preliminary meeting. I would just like to touch

base with you. To save time, I am happy to stop by your office.

I can meet before 10:00AM tomorrow (Friday) or anytime before 1:00PM or after 2:30PM on Monday.

Thank you,

Kevin

Home: (b) (6)
Office: 662-9848
Farm: 669-1149

-----Original Message-----
From: Sarah_Allen@nps.gov [mailto:Sarah_Allen@nps.gov]
Sent: Thursday, February 25, 2010 3:25 PM
To: Kevin Lunny
Subject: RE: Meeting

Hi:

I am not sure monday would work either because I have a couple of meetings that will likely take alot of time. Wed and thurs I am gone most of the days but friday in the morning might work.

How does that work with your schedule? After that I will be away for a couple of weeks. What would you like to discuss? Perhaps we can do so on the phone?

Sarah

Sarah G. Allen, PhD
Senior Science Advisor
Point Reyes National Seashore
Point Reyes Station, CA 94956
415-464-5187

"Kevin Lunny"
<kevin@drakesbayoyster.com>

02/28/2010 11:30 AM

To <Sarah_Allen@nps.gov>
cc
bcc
Subject RE: Meeting

History: This message has been replied to.

Sarah,

Thank you for making the time - we can keep it short. Lunch on Monday is perfect. Where should we meet? I'm happy to come to your office if it is easier for you.

Kevin

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Best regards,

Sarah

Sarah G. Allen, PhD
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Point Reyes National Seashore
Point Reyes Station, CA 94956
415-464-5187

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Sarah

Sarah G. Allen, PhD
Senior Science Advisor
Point Reyes National Seashore
Point Reyes Station, CA 94956
415-464-5187

"Nancy Lunny" <nancy@drakesbayoyster.com>

02/25/2010 06:09 PM

To <sarah_allen@nps.gov>

cc

bcc

Subject Seal observer training

History: This message has been replied to.

Good evening, Sarah,

I am very much looking forward to being a part of the volunteer seal observer training program. You had mentioned that there is a training planned for this coming Saturday, February 27th. Due to a previous committment, I am unable to attend this training. I would very much appreciate it if you would advise me of the next opportunity for training.

My best,

Nancy Lunny

Sarah Allen/PORE/NPS
02/25/2010 12:22 PM

To "Kevin Lunny" <kevin@drakesbayoyster.com>
cc
bcc Sarah Allen/PORE/NPS
Subject Re: Meeting

Hi Kevin:

Thank you very much for the offer to meet. I would like to meet next week instead on monday pm or tuesday, because I have a lot to do to prepare for the training this saturday.

Would either of those days work for your schedule?

I am looking forward to moving forward with you!

Sarah

Sarah G. Allen, PhD
Senior Science Advisor
Point Reyes National Seashore
Point Reyes Station, CA 94956
415-464-5187

"Kevin Lunny" <kevin@drakesbayoyster.com>

"Kevin Lunny" <kevin@drakesbayoyster.com>
02/25/2010 11:45 AM

To <Sarah_Allen@nps.gov>
cc
Subject Meeting

Hi Sarah,

Do you have any time today for a half hour chat? Over lunch or coffee?

If today can't work, I also have some times that could work tomorrow.

Thank you,

Kevin

"Kevin Lunny" <kevin@drakesbayoyster.com>

01/30/2010 10:09 AM

To "Don Neubacher" <Don_Neubacher@nps.gov>

cc

bcc

Subject Drakes Bay Oyster Farm Driveway

History: This message has been replied to and forwarded.

Don,

Normally you would have the oyster farm road graded immediately before a dignitary visits the farm. We request that you not grade the road until after Mr. Shafroth's visit on Thursday, February 4th.

Thank you,

Kevin and Nancy Lunny

"Kevin Lunny"
<kevin@drakesbayoyster.com>

12/29/2009 03:30 PM

To "Don Neubacher" <Don_Neubacher@nps.gov>

cc "'Kirsten Ramey'" <KRAMEY@dfg.ca.gov>, "'Sonke Mastrup'" <SMastrup@dfg.ca.gov>, "'Jon Fischer'" <JFischer@fgc.ca.gov>, "Cassidy Teufel"

bcc

Subject Drakes Estero Shellfish Leases

History: This message has been forwarded.

20091229 DBOC to Don Neubacher re clams.pdf

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1149
kevin@drakesbayoyster.com
nancy@drakesbayoyster.com

December 29, 2009

Don Neubacher
Superintendent
Point Reyes National Seashore
One Bear Valley Road
Point Reyes Station, CA 94956

Dear Mr. Neubacher.

We are in receipt of your letter dated 12/23/09. The characterization that cultivating clams on lease M-438-01 is a change that requires review is without merit. You have personal knowledge that the California Fish and Game Commission (FGC) approved the cultivation of clams on lease M-438-01 in 1993. The FGC recently reaffirmed this when it corrected a typographical error incorrectly indicating the clams were to be cultivated on lease M-438-02, which has never been the case. Your letter incorrectly states that the FGC granted permission to cultivate clams at its 12/10/09 hearing. The agenda and staff report are unambiguous that this approval was granted 16 years ago. As the cultivation of clams on lease M-438-01 has been authorized since 1993, no further approvals from NPS to cultivate clams are necessary. Please direct any questions you may have about this to the FGC. To avoid further unnecessary confusion, the SUP should be conformed to reflect the corrected lease.

Sincerely,

Kevin Lunny Nancy Lunny

cc: California Department of Fish and Game
Fish and Game Commission
California Coastal Commission

United States Department of the Interior

NATIONAL PARK SERVICE
Point Reyes National Seashore
Point Reyes, California 94956

IN REPLY REFER TO:

L1425
02-106

December 22, 2009

Mr. Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

Dear Kevin:

We want to acknowledge receipt of your development request and site drawing on October 15, 2009. We subsequently received a copy of revised versions, along with development costs and a project description, submitted to the California Coastal Commission on October 30, 2009.

Article 6 of your Special Use Permit sets forth requirements regarding requests for Improvements and Alterations. Improvements and Alterations require prior written approval of the National Park Service. As a prerequisite, the Permittee is to submit design plans and other relevant data to the National Park Service.

Accordingly, we will consider your October 15 and October 30 correspondence as a request under Article 6 of your Special Use Permit. We will be reviewing your requests through our standard environmental compliance process as required by the National Environmental Policy Act. This project review process has already been initiated and should be completed in 30-45 days. The objective of this initial review is to determine what level of environmental compliance is required for the proposed project and whether an Environmental Assessment or Environmental Impact Statement will be needed. We will notify you once this initial process is complete. Regardless of the compliance pathway necessary, it is likely that more information on the project will be requested of you.

In addition, we acknowledge you have received permission from the California Fish and Game Commission to place Manila clams in Lease M-438-01. As stated in your permit (Article 4bvi),

you may not implement any modifications to CDFG leases without prior written approval from the National Park Service.

Article 4bvi states:

Permittee will not introduce species of shellfish beyond those described in the existing leases from the CDFG. Permittee may seek to conform and/or modify these leases with the CDFG. Any modifications approved by CDFG will be considered by Permitter on a case-by-case basis, and Permittee may not implement any such modifications without the prior written approval of the Permitter.

At this time, we would like to request additional information on Manila clam production. Please provide a proposal that includes location and size of growing area, approximate number of bags and clams, seed origin, history of production, and other details on the production of Manila clams. With this information, we will use our standard process to meet our environmental compliance responsibilities.

Thanks for your attention to these matters.

Sincerely,

Don L. Neubacher
Superintendent

"Kevin Lunny" <kevin@drakesbayoyster.com>

12/21/2009 07:17 PM

To "George Turnbull" <George_Turnbull@nps.gov>, "Don Neubacher" <Don_Neubacher@nps.gov>, "Gregg Langlois" <Gregg.Langlois@cdph.ca.gov>, "Cassidy Teufel"

cc

bcc

Subject Drakes Estero Manila Clams

History: This message has been forwarded.

Attached is a response to the CCC enforcement action letter dated December 7, 2009.

20091221 DBOC to CCC re Clam Violation.pdf

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1149
kevin@drakesbayoyster.com
nancy@drakesbayoyster.com

December 21, 2009

Jo Ginsberg
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA94105-2219

Re: CCC-07-CD-11 Drakes Bay Oyster Company

Dear Ms. Ginsberg,

Manila clams have been cultured on M-438-01 since 1993 when Johnson Oyster Company (JOC) asked that they be added to M-438-01 as a cultured species, and the California Fish and Game Commission (FGC) approved the request. Inadvertently, however, through a FGC clerical error, the FGC added the Manila clams to the farm's other lease (M-438-02) that was created by the FGC in 1979 for the purpose of culturing native rock scallops. Pursuant to the actual FGC approval, JOC clam culture began on M-438-01. Since 2007, Drakes Bay Oyster Company (DBOC) and the California Department of Fish and Game (CDFG) have been working toward correcting the error.

DBOC brought the FGC clerical error to the attention of the California Coastal Commission (CCC) in its Coastal Development Permit (CDP) application 2-06-003, on August 20, 2008. In so doing, DBOC made the CCC aware that the FGC error was to be corrected.

The CCC 2007 Consent Cease and Desist Order CCC-07-CD-11 (CDO) reflected the clerical error. The approved cultured species included in the CDO was taken from the FGC lease language that contained the 1993 FGC error. A correction to both the FGC lease and the CCC Consent CDO was necessary, so that the clams could stay on M-438-01 where they had been officially permitted.

Prior to the correction by the FGC, DBOC received an enforcement letter from CCC dated September 16, 2009. The letter stated that DBOC was out of compliance with the Consent CDO because Manila clams were located outside of M-438-02. DBOC contacted CDFG about this matter. Devin Bartley, State Aquaculture Coordinator, told

DBOC that the matter was submitted to the FGC for the correction, and would be placed on an upcoming agenda.

On October 2, 2009, DBOC submitted a letter to CCC noting that the FGC would be acting on the issue soon and that CDFG would be in contact with CCC regarding the clam location.

On October 15, 2009, I asked Cassidy Teufel and Allison Dettmer if the clams could remain where they had always been, on M-438-01, until the upcoming FGC meeting that would address the clerical error issue. At the time, Allison and Cassidy recommended that DBOC move the clams for two reasons: first, Peter Douglas was considering an enforcement action against DBOC because of the clam location and second, the Coastal Commissioners were not likely to approve a CDP if DBOC was out of compliance with clams. Given this CCC position, DBOC agreed to move the clams from M-438-01 to M-438-02.

In response to the CCC directive, DBOC initiated a process to move the clams. Step one was to contact the CDFG to obtain coordinates for the new location. Even though M-438-02 was an eligible area to grow shellfish, as a practical matter, DBOC had not used it previously, thus were unfamiliar with it. CDFG provided the latitude/longitude coordinates in "minutes/seconds." Step two; convert the coordinates to decimals so they could be entered into a hand-held GPS. In making these calculations, an error was made.

On October 29, 2009, DBOC notified the agencies that the clams had been moved to M-438-02 as directed by CCC.

On November 25, 2009, CDFG provided the December 9-10 FGC meeting agenda to the CCC. On the Consent Calendar for that meeting, included as item 15, was the correction of the 1993 Manila clam error.

On November 30, 2009, I receive a copy of an email from CDFG to NPS scientist Ben Becker with the coordinates of M-438-02. Various other agencies were copied, as was DBOC.

On December 03, 2009, I sent an email to Ben Becker and said: "DFG forwarded me a copy of the email of November 30, 2009. Apparently, you have questions about our lease with the State. Would you please detail your concerns to us? Why didn't you ask us, or copy us with copy of your inquiry. We would be happy to work with you." NPS did not respond.

On December 8, 2009, DBOC first learned of the clam placement error. I received a call from US Senator Dianne Feinstein's office with questions about clams having been placed in a prohibited area. I told them that I did not know what they were talking about. I explained that we had moved the clams onto M-438-02 as directed by the CCC. While on the call, the Senator's staff sent me an aerial photo and map prepared by the NPS describing where the clams were. I was astonished at what I saw. I explained to them

that this had not been brought to our attention and we would address the problem immediately. During the same day, the CCC and the NPS called to also notify DBOC of the problem. The message was clear – get the clams out of the prohibited area.

DBOC has worked very hard to develop a good rapport with CCC and was moving steadily towards the CDP. The call from Cassidy clearly revealed that CCC perceived an unintentional mistake as intentional, resulting in a loss of trust for DBOC. The calls I had received on December 8, 2009, included a call from a US Senator's office, a call from the NPS Pacific West Regional Director's office and the Point Reyes National Seashore Superintendent, a call from the California Coastal Commission informing me of a $61,250.00 fine and a loss of trust. NPS directed us to move the clams. We moved the clams the next day.

In the process of retrieving the clam bags, DBOC kept the boat in deep water and outside of the seal protection area so that there would be no damage to eelgrass or other resources. It was not seal pupping season and there were no seals around during the placement or recovery of the clam bags. Removing the bags was a simple three hour task of lifting the bags up off the sandbar and hand carrying them to the two barges that were attached to the boat. The bags were in an area devoid of eelgrass and the bags left no marks on the sand. (To give you a sense of volume, the clams in question would have fit in the back of a pickup truck.) It is important to note, according to NPS data, the largest causes of seal disturbances in Drakes Estero---kayaks and seashore visitors---, are allowed to use and enjoy the very areas prohibited to DBOC.

In 1992 NOAA, CDFG and NPS created harbor seal protection protocols. NOAA and NPS records show that the protocols have worked. Moreover, recent reports from both agencies reveal that harbor seals along the California coast are at carrying capacity. Today, at the request of the Sierra Club and National Parks Conservation Association, the Marine Mammal Commission is undertaking a new review and DBOC is working closely with them in that review.

I had a conversation with Cassidy Teufel about the clam placement error. From this conversation, I learned that it appeared to CCC that DBOC must not "know" where the boundaries of the protected areas are, if they placed clams within the prohibited area. DBOC is aware of the locations of these areas. DBOC uses established routes to each and every shellfish bed. Those well known routes do not interfere or cross either protected area. DBOC boats will continue to use the established routes. There is no reason to expect that boat traffic is entering the prohibited areas or that boat traffic will enter these areas in the future. This is an unusual situation which resulted in an isolated error. Cassidy and I agreed that it would be a good idea to mark the boundaries of the seal protected areas with buoys so that there would be no inadvertent boat traffic within these areas. This would make it clear to all parties concerned.

CCC has expressed the concern that this mistake was intentional. <u>It was not</u>.

DBOC understands that an error occurred while undertaking a very unusual task and DBOC takes responsibility for that error.

Locating a growing area is not a normal task and does not suggest that a similar error could occur in the future. DBOC staff is fully aware of the locations of all of the historic oyster beds. The well established oyster beds do not move and are well known to the staff. The staff never looks for "new areas" to place shellfish.

At the December 10, 2009 FGC meeting, the Commission formally acknowledged, by a unanimous vote, that in 1993, the commission approved Manila Clams as a cultured species on M-438-01. The FGC corrected the clerical error that erroneously indicated Manila clams on M-438-02. Manila clams are legal and approved on M-438-01 with FGC, CDFG and NPS. In light of the FGC determination, we respectfully request that the CCC conform all applicable records and documents. When the record is conformed there will be consistency between all agencies and the clams will remain in the same location that they have historically been grown.

As previously stated, the placement of clams in a prohibited area was unintentional. Harbor seals were not present and eel grass was not disturbed. DFG informed CCC of the FGC error and the movement of clams should not have been required. We therefore respectfully request that the $61,250.00 penalty be withdrawn. Please confirm that our CDP application and all applicable records have been changed to reflect the action taken by the FGC.

Enclosed, please find a check in the amount of $8,500.00. This represents the balance due for the DBOC CDP application. We look forward to working with CCC staff through the completion of the CDP process.

Sincerely,

Kevin Lunny Nancy Lunny

Cc: George Turnbull, Deputy Regional Director, National Park Service
Don Neubacher, Superintendent, Point Reyes National Seashore
John McCamman, Director, California Department of Fish and Game
John Carlson, Executive Director, California Fish and Game Commission
Gregg Langlois, Senior Environmental Scientist, California Department of Public Health, Environmental Management Branch
Allison Dettmer, CCC, Deputy Director, Energy, Ocean Resources, and Federal Consistency Division
Cassidy Teufel, CCC, Coastal Program Analyst
Lisa Hagge, CCC, Chief of Enforcement
Zachary Walton, Esq., Paul, Hastings, Janofsky & Walker LLP

Ann Nelson/PORE/NPS
12/14/2009 08:05 AM

To agresources@erols.com
cc kevin@drakesbayoyster.com, nancy@drakesbayoyster.com
bcc
Subject Fw: Fish and Game Commission

Dear Mr. Weiman:

Per your request, we're hereby forwarding you a copy of the requested letter (in Word and PDF); we're also sending copies to Mr. and Mrs. Lunny.

Fish&GameCommission Letter 120909.doc

Fish&GameCommission Letter 120909.pdf

"David M Weiman" <agresources@erols.com>
12/10/2009 02:51 PM

To "Neubacher, Don" <Don_Neubacher@nps.gov>
cc "Lunny, Kevin" <kevin@drakesbayoyster.com>, "Lunny, Nancy" <nancy@drakesbayoyster.com>
Subject Fish and Game Commission

Don.

According to the Fish and Game Commission, you submitted a letter regarding the DBOC lease issue that was before the Commission today.

Would you please provide us with a copy of that letter?

Thank you.

dave w.

David M. Weiman
Agricultural Resources
635 Maryland Ave., N.E.
Washington, D.C. 20002
(202) 546-5115
(202) 546-4472 fax
agresources@erols.com

United States Department of the Interior

NATIONAL PARK SERVICE
Point Reyes National Seashore
Point Reyes, California 94956

L1425

December 8, 2009

California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

Re: Consent Item #15 for the December 9, 2009 Fish and Game Commission Meeting regarding expansion of Manila Clams to Drakes Estero Aquaculture Lease M-438-01.

Dear Commissioners:

Drakes Bay Oyster Company (DBOC) has proposed to expand the mariculture use in Drakes Estero Lease No. M-438-01 (the "Lease"), as reported on the Consent Calendar Agenda Item No. 15 for December10, 2009 for the meeting of the Fish and Game Commission. We do want to acknowledge that DBOC does have the right under our permit to "seek to conform and/or modify these leases with CDFG."

Point Reyes National Seashore, a unit of the National Park Service (NPS) has several concerns regarding Manila clam cultivation that is within the park's boundary. The NPS has not had the opportunity to fully discuss with DBOC or the California Department of Fish and Game (CDFG) the proposed expansion of mariculture by DBOC.

Our specific concerns follow:

- Changes in the current CDFG lease are subject to environmental review and analysis under the National Environmental Policy Act (NEPA), along with the California Environmental Quality Act (CEQA). We believe the expansion of the area from one acre to the entire lease of over 1,000 acres where manila clams can be cultivated is an important change to the current lease and requires environmental review. We also believe that consultation regarding this expansion is required with NOAA Fisheries, California Coastal Commission, Army Corps of Engineers, and the US Fish and Wildlife Service. We are concerned about the potential ecological risks that this species may bring to Drakes Estero and native species there. No risk analysis for this species to be introduced has been conducted.

- Potential expansion of Manila clams as an invasive species is a major concern. While Manila clams have been introduced and have spread in other estuaries of California, there is currently no evidence to our knowledge that they escaped or invaded Drakes or Limantour Esteros. The National Academy of Sciences noted in their report *Shellfish Mariculture in Drakes Estero* (NAS 2009) that "The oysters and clams cultured in Drakes Estero are nonnative species that have some risk of establishing self-sustaining populations (p 5)" and further noted that "continued culture of

nonnative oysters and clams poses some risk of their eventual naturalization in Drakes Estero and larval spread to other coastal lagoons, a risk that could be minimized but not entirely eliminated by culturing triploids (NRC, 2004a) (p 22)". Finally, they reported that "If the Manila clam successfully reproduces and establishes populations in Drakes Estero, it may compete with native infaunal suspension-feeding bivalves" (p 52).

- Before any expansion of the cultivation of this non-native species, a thorough survey should be conducted to confirm its absence or presence throughout the estero. Dr. James Carlton, a leading authority on invasive species, communicated to us by letter that "a survey of Drakes Estero to determine if the Manila clam *Venerupis philippinarum* is established there would be of interest." He noted that "As of 1979, I could find no published or museum records of the Manila clam in Drakes Estero. I may have overlooked previous records, however, and I also did not personally do any surveys there." National Park Service biologists have conducted informal surveys, and not seen this clam naturalized within Drakes Estero. A systematic survey would verify the presence or absence of this potentially invasive non-native species in Drakes Estero.

- Potential changes in the intensity of cultivation. The addition of bag culture for cultivating manila clams throughout the estero has the added concern of providing a substrate for the highly invasive non-native tunicate, *Didemnum* species A or *Didemnum* sp., which is already present in the estero attached to oyster racks, and more recently on natural habitat at Bull Point. The NAS in their report noted that "Any culture bags used to contain Manila clams would provide additional solid surfaces for epibionts (species that attach to other living organisms)" (p 52), and that "It is now a very evident epibiont covering a substantial fraction (up to about half, judging from the committee's observations made during its September 2008 visit) of subtidal surface space on shell surfaces of living Pacific oysters and on associated oyster-rearing gear in Drakes Estero" (p. 52). They noted that "Research on control of abundance and risk of spread of the invasive tunicate, *Didemnum vexillum*, is urgently needed, not just in Drakes Estero, but worldwide." (p 8). The potential to expand substrate material throughout the estero has the potential to expand the presence of this highly invasive species in Drakes Estero and to the adjacent Estero de Limantour (a newly designated state Marine Reserve) where it presently does not occur.

We request you postpone any action on this issue at this time and we appreciate your attention to these concerns.

Sincerely,

Don L. Neubacher
Superintendent

"Kevin Lunny"
<kevin@drakesbayoyster.com>
12/09/2009 02:24 PM

To <Don_Neubacher@nps.gov>

cc "'Cassidy Teufel'" <cteufel@coastal.ca.gov>, "Tim Ragen" <tragen@mmc.gov>, "'Tom Moore'" <TMOORE@dfg.ca.gov>, "Kirsten Ramey"

bcc

Subject Manila Clam Relocation

20091209 DBOC to Don Neubacher.pdf

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1149
kevin@drakesbayoyster.com
nancy@drakesbayoyster.com

December 9, 2009

Don Neubacher
Superintendent
Point Reyes National Seashore
One Bear Valley Road
Point Reyes Station, CA 94956

Dear Mr. Neubacher.

This will acknowledge your letter and directive of December 4, received yesterday December 8, and your 1:30 pm telephone call, with George Trumbull.

As of 1:00 pm today, all clams were moved, as you directed and returned to their original location in the Estero.

This matter could have been addressed far more expeditiously had you or your staff simply picked up the telephone and called us. In less than 24 hours of learning about this matter, the clams were moved as directed and this matter is fully resolved.

As you are aware, clam placement on our state lease became an issue because an inadvertent clerical – *paperwork* – error that occurred in1993, sixteen years ago and a dozen years before we acquired the oyster farm. The clams were there prior to 1993 – and have been there since. The Estero is the same. The resource is the same. The production is the same. After acquiring the farm we began correcting a series of clerical issues (NPS, for instance, had not issued a SUP to Johnson Oyster Company for the decade prior to our acquisition of the oyster farm). One of the last remaining administrative items to be addressed – correcting the administrative list of shellfish to be grown pursuant to the state lease We have been trying to get this clerical error corrected – and, as you know, it is now on the Calendar for the Fish and Game Commission tomorrow.

Even though DBOC's shellfish lease is issued by the California Department of Fish and Game (CDFG), they were not informed of the concern, but only asked by Dr. Ben Becker of your staff for technical GPS coordinates. In the CDFG response to Becker, we were copied. Upon receipt, we immediately contacted Dr. Becker and asked:

> "CDFG forwarded me a copy of the email of November 30, 2009. Apparently, you have questions about our lease with the State. Would you please detail your concerns to us? Why didn't you ask us, or copy us with copy of your inquiry. We would be happy to work with you."

Becker did not acknowledge or respond to our request for information. Had he done so, this could have been handled more responsibly – and far more quickly.

Your letter raised additional issues which we will address in a subsequent communication.

Thank you.

Kevin Lunny Nancy Lunny

cc: California Department of Fish and Game
Fish and Game Commission
California Coastal Commission
Marine Mammal Commission
Senator Dianne Feinstein
Senator Barbara Boxer
Rep. Lynn Woolsey
Marin County Board of Supervisors

George Turnbull/OAKLAND/NPS
12/08/2009 10:43 AM

To kevin@drakesbayoyster.com
cc "Don Neubacher" <Don_Neubacher@nps.gov>
bcc
Subject Re: Phone Call

Kevin,

Don and I will call you at the number below at 1:30 pm.

"Kevin Lunny" <kevin@drakesbayoyster.com>

"Kevin Lunny" <kevin@drakesbayoyster.com>
12/08/2009 10:30 AM
Please respond to kevin@drakesbayoyster.com

To "George Turnbull" <George_Turnbull@nps.gov>, "Don Neubacher" <Don_Neubacher@nps.gov>
cc
Subject Phone Call

George and Don,

I will be in my office today from 11:00 AM until 5:00 PM. I will be unavailable from 2:00 to 2:30. Feel free to call me, or let me know if you would like me to call you.

(b) [redacted]

Kevin
Sent via BlackBerry by AT&T

United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807

IN REPLY REFER TO:
L1425 (PWR-RD)
02-106

George,

DEC 0 4 2009

COPY FOR YOUR INFORMATION

Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

Dear Mr. Lunny:

We have tried to reach you several times about bags with clams and/or oysters and other materials which have been placed in the Harbor Seal Protection Area of Drakes Estero and outside the permitted area. We have attached relevant maps from the Special Use Permit as well as a geographic referenced photograph regarding the violation (see attachments).

This letter serves as a notice of violation by Drakes Bay Oyster Company (DBOC). The situation as described below is a violation of the terms and conditions of DBOC's Special Use Permit (MISC-8530-6000-8002) with the National Park Service, and is therefore a violation of Title 36 Code of Federal Regulations (CFR).

Using areas outside of the permitted area described as the "Premises" on page 1 of the Special Use Permit is a permit violation. This is also a violation of section 4(b)(vii) and Exhibit C of the Special Use Permit. Section 4(b)(vii) states:

> Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites. The Marine Mammal Protection Act, 16 U.S.C. 1361 et seq., includes a prohibition against any act of pursuit, torment or annoyance that has the potential to injure or disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering. The National Oceanic and Atmospheric Administration (NOAA) recommends maintaining a distance of at least 100 yards to avoid disturbance to seals. Permittee will maintain a distance of at least 100 yards from hauled out seals throughout the year. Permitter will monitor marine mammal populations in Drakes Estero. In addition, during the pupping harbor seal closure period, March 1-June 30, the designated wilderness area (outside of Permit area) is closed to all boats. Permittee will follow "Drakes Estero Aquaculture and Harbor Seal Protection Protocol" attached hereto as Exhibit C. If required by CDHS, watercraft may use the Main Channel identified in Exhibit C during the pupping harbor seal closure period only to access CDHS's sentinel monitoring station for marine biotoxins. Boats shall be operated at low speed, near the eastern shore, to minimize chance of disturbance to harbor seals. No other use of the Main Channel is authorized during the pupping harbor seal closure period.

TAKE PRIDE® IN AMERICA

The DBOC Special Use Permit's Exhibit C: Drakes Estero Aquaculture and Harbor Seal Protection Protocol (Item 3) states:

> Throughout the year, all of Permittee's boats, personnel, and any structures and materials owned or used by Permitttee shall be prohibited from the harbor seal protection areas identified on the Protocol Map. In addition, all of the Permittee's boats and personnel shall be prohibited from coming within 100 yards of hauled out seals.

Violating the terms and conditions of the Special Use Permit also violates Title 36 CFR section 1.6(g)(2) which states: "Violating a term or condition of a permit issued pursuant to this section is prohibited." Furthermore, Title 36 CFR section 1.6(h) states: "Violating a term or condition of a permit issued pursuant to this section may also result in the suspension or revocation of the permit by the superintendent."

DBOC has thirty days from the date of this letter to remedy this permit violation. Please provide formal notice when the bags and other materials are removed. Thank you for your prompt attention to this matter.

Sincerely,

George D. Turnell

FOR Rory D. Westberg
Acting Regional Director, Pacific West Region

Attachment 1: Special Use Permit Exhibit C: Drakes Estero Aquaculture and Harbor Seal Protection Protocol: Protocol Map

Attachment 2. Special Use Permit Exhibit A: Drake's Estero Aquaculture & CDFG Leases

Attachment 3. Geographic Referenced Photo of oyster activity in Harbor Seal Protection Area

cc: Peter Douglas, California Coastal Commission 45 Fremont St., Suite 2000
San Francisco, Ca 94105

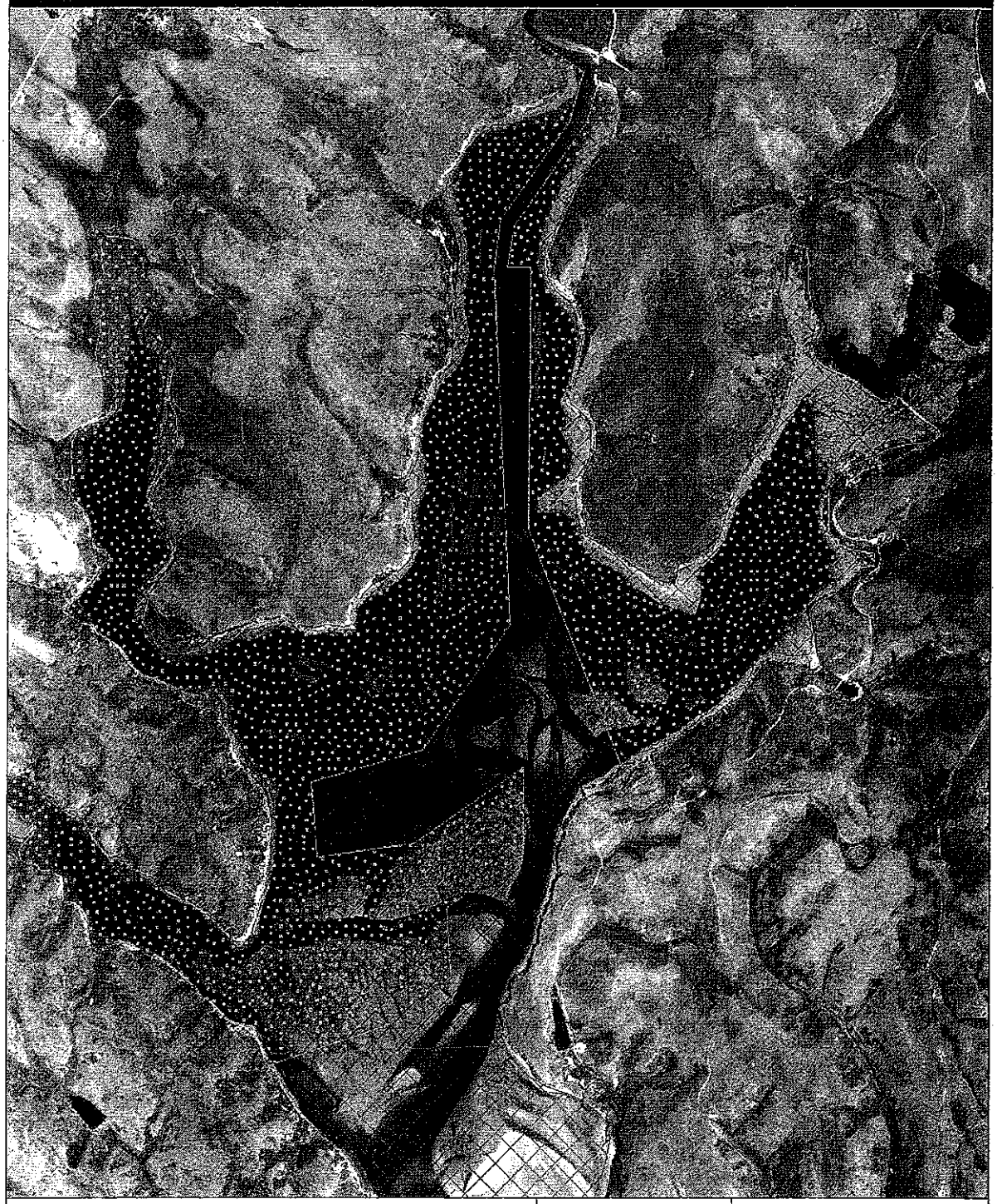
Director McCamman, California Department of Fish and Game,1416 9th Street,
Sacramento, Ca 95814-5515

FIGURE 2:HARBOR SEAL PROTECTION AREA

Drake's Estero Aquaculture & CDFG Leases

NPS Resources and SUP Area

National Park Service
U.S. Department of the Interior



Permit Type

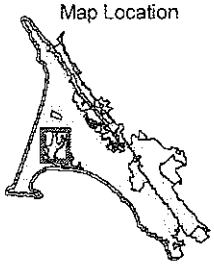
- ROP
- SUP

Oyster Racks

- Active
- Dilapidated

- Aquaculture Lease/SUP Area
- Potential Wilderness
- Existing Wilderness

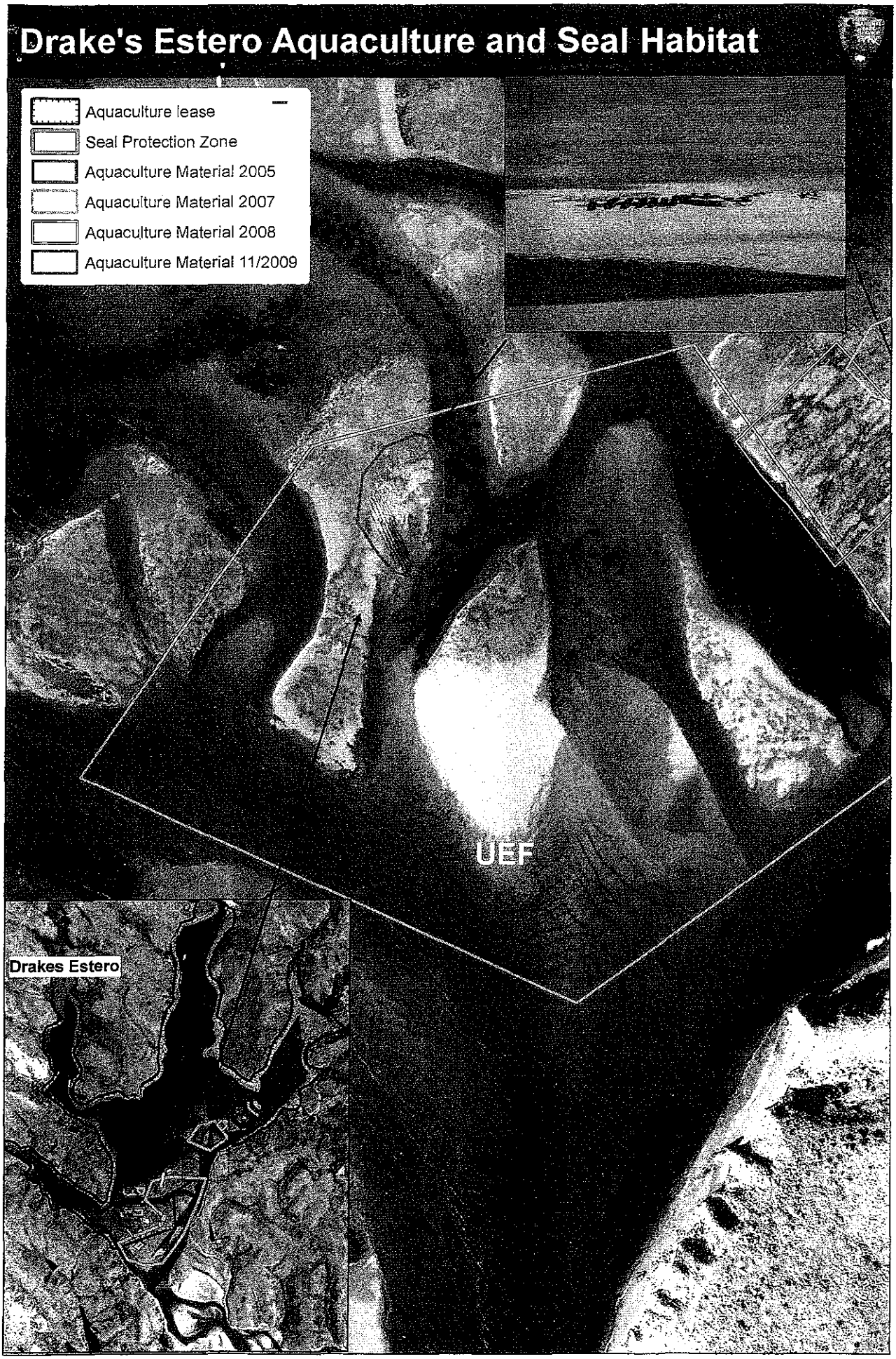
Map Location



N
W E
S

0 0.5 Miles

Drake's Estero Aquaculture and Seal Habitat



0 50 100 200 300 400

Meters

"Kevin Lunny"
<kevin@drakesbayoyster.com
>

12/04/2009 07:53 AM

Please respond to
kevin@drakesbayoyster.com

To "George Turnbull" <George_Turnbull@nps.gov>, "Don Neubacher" <Don_Neubacher@nps.gov>
cc
bcc
Subject Phone Call

History: This message has been replied to.

Dear George and Don,

I got the message that you called yesterday. I was out and about and will be again today. Would you please give me a couple times that I could call you either today or Monday? Also, would you please send me an agenda for the call?

Thank you,

Kevin
Sent via BlackBerry by AT&T

"Kevin Lunny"
<kevin@drakesbayoyster.com>
12/03/2009 12:25 PM

To <Ben_Becker@nps.gov>
cc
bcc
Subject RE: M-438-02 and lat longs for corners from ArcGIS

Hi Ben,

DFG forwarded me a copy of the email of November 30, 2009. Apparently, you have questions about our lease with the State.

Would you please detail your concerns to us?

Why didn't you ask us, or copy us with copy of your inquiry. We would be happy to work with you.

Thank you.

Kevin Lunny

-----Original Message-----
From: Tom Moore [mailto:tmoore@dfg.ca.gov]
Sent: Monday, November 30, 2009 1:20 PM
To: Ben_Becker@nps.gov
Cc: Gregg.Langlois@cdph.ca.gov; Cassidy Teufel; Kirsten Ramey
Subject: Fwd: M-438-02 and lat longs for corners from ArcGIS

Hi Ben,

As per our phone conversation, I am forwarding my email to Kevin Lunny regarding locating (lat-long) the corners of lease M-438-02. These coordinates should not be considered as a legal description of the corners of lease M-438-02 and are a rough approximation only.

This lease was a deep-water lease for scallop culture using lantern nets, it was never intended for clam culture which takes place on the bottom in intertidal mudflats. Clam culture was mistakenly authorized for this lease, not M-438-01 as requested by JOC and the Department, through clerical error on part of the Fish and Game Commission back in the 1990s.

The mapped location of lease M-438-02 (DPH management plan Fig 2.) is consistent with the conditionally approved harvest guidelines for lease M-438-02. Further information on DPH management of shellfish harvest from Drakes Estero can be obtained from Gregg Langlios at DPH (CC'd here).

I will be retiring on Dec. 16, 2009, my replacement and point-of -contact after that date will be Kirsten Ramey. Her contact inforamtion is as follows:

Email Addresse
KRAMEY@dfg.ca.gov.

Phone Numbers
Office: (707) 445-5365
Mobile: (707) 761-1755
Fax: (707) 445-7883

If you have any questions or need clarification on this topic, please let me know.

Tom

Thomas O. Moore
Calif. Dept. Fish and Game
Marine Aquaculture Coordinator,
P.O. Box 1560
Bodega Bay, CA 94923
(707) 875-4261
(707) 688-3192 cell
(707) 875-4269 FAX
tmoore@dfg.ca.gov
Due to the Governor's Executive Order, I will be off on Furlough the 1st, 2nd & 3rd Friday of each month

You will never find time for anything. If you want time you must make it. C. Buxton

>>> TMOORE 10/19/2009 11:33 AM >>>
Kevin,

I used Fig 2. DPH Management Plan for DE 2006 location for M-438-02 (see attached) and created a polygon of one-acre area. This is my best approximation of: 1) the location and, 2) the lat long coordinates for the corners (see attached print-out).

I used DPH location for the lease since they control harvest and have water quality info based on this mapped location. Robert Reese should be able to provide the most accurate location, based on the lease description, however we may wish to use the DPH location and provide an accurate description and amend the lease description.

Take a look and let me know your thoughts.

Tom

Thomas O. Moore
Calif. Dept. Fish and Game
Marine Aquaculture Coordinator,
P.O. Box 1560
Bodega Bay, CA 94923
(707) 875-4261
(707) 688-3192 cell
(707) 875-4269 FAX
tmoore@dfg.ca.gov
Due to the Governor's Executive Order, I will be off on Furlough the 1st, 2nd & 3rd Friday of each month

You will never find time for anything. If you want time you must make it. C. Buxton

Don Neubacher/PORE/NPS
11/04/2009 08:26 AM

To Ann Nelson/PORE/NPS@NPS
cc
bcc
Subject Fw: Drakes Bay Oyster CDP Application

FYI--files

Don Neubacher
Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

415-464-5101 (office)
415-663-8132 (fax)

The National Park Service cares for special places saved by the American people so that all may experience our heritage.
----- Forwarded by Don Neubacher/PORE/NPS on 11/04/2009 08:26 AM -----

Kevin McKay/PORE/NPS
11/04/2009 07:49 AM

To Don Neubacher/PORE/NPS@NPS
cc
Subject Fw: Drakes Bay Oyster CDP Application

FYI

Kevin E. McKay
Special Park Uses/Concessions
National Park Service
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, CA 94956
(415) 464-5111
Fax (415) 464-5182

EXPERIENCE YOUR AMERICA
The National Park Service cares for special places saved by the American people so that all may experience our heritage.
----- Forwarded by Kevin McKay/PORE/NPS on 11/04/2009 07:48 AM -----

"Kevin Lunny" <kevin@drakesbayoyster.com>
11/04/2009 12:38 AM PST

To: "'Kevin McKay'" <Kevin_McKay@nps.gov>
cc:
Subject: FW: Drakes Bay Oyster CDP Application

Hi Kevin,

This is the latest info sent to the Coastal Commission.

Kevin

From: Kevin Lunny [mailto:kevin@drakesbayoyster.com]
Sent: Friday, October 30, 2009 4:47 PM
To: 'Cassidy Teufel'
Subject: Drakes Bay Oyster CDP Application

Hi Cassidy,

Here's the latest information for the CDP. Please let me know if I can get you any more information.

I look forward to talking to you about the application fee... I'm a little nervous about how expensive it will be.

Thank you,

Kevin 20091030 CDP letter.pdf 20091030 Project Description.pdf 20091030 Development Costs.pdf

CDP Site Plan Revision 10.30.09.pdf

DRAKES BAY OYSTER COMPANY
17171 Sir Francis Drake Blvd., Inverness, CA 94937

California Coastal Commission
Attn: Cassidy Teufel
45 Fremont Street, Suite 2000
San Francisco, CA 94105

October 30, 2009

RE: Coastal Development Permit Application No: 2-06-003 – Response to CCC letter dated 10/15/09

Dear Mr. Teufel,

We have received your letter and understand what you have requested. Following our recent conversations and listening to your recommendations, we have further reduced the scope of the project. Also at you suggestion, we removed our requests for changes in our CDFG shellfish leases until approved by CDFG. At your suggestion, we may re-apply for another CDP in the near future. This letter will address each of your requests and a revised project description will be attached.

1. An itemized cost estimate for the project is attached.
2. Repairs.
    a. No new siding will be used on the stringing shed or the retail building.
    b. No equipment will be required to replace the siding on the stringing shed or the retail building.
    c. Repairs will not result in an expansion of building(s) footprint.
    d. Most of the repairs will take approximately one year to complete. The oyster racks will be repaired as needed on an ongoing basis.
    e. The materials used to make the repairs will include concrete for interior floor repairs, wood, sheet rock, interior plumbing, interior electrical, roofing materials and paint.
    f. The repairs will require the use of small tools. The temporary staging area for building materials will be behind the Ag worker housing trailers on the east end of the property. This will keep the public area free from construction material storage.
    g. Care will be taken during repairs so that no debris or construction materials enter the estero.
    h. The only structural repair required is to the roof of the processing building. This is necessary because a portion the roof framing is rotten and requires replacement.
3. Wooden oyster washing pier.
    a. The repair of the deck of the pier does not require removal or replacement of pilings.
    b. Approximately 100 square feet of replacement decking is required. The gangway will also be replaced. No change in the footprint will result from this project.
    c. There is no eelgrass near the oyster washing pier.
4. Floating dock

a. The replacement floating dock will be similar to the existing floating dock. It will be a wooden dock with Styrofoam floats.
b. The existing floating dock will be floated to the working beach near the stringing shed during high tide. During low tide, it will be fully dismantled by hand and hauled off site to an approved dump site. The new floating dock will be placed on the same beach at low tide and floated into place during high tide.
c. The new floating dock will be the same size as the existing dock (12' X 60') and will be anchored in the same position. It will occupy the same footprint.
d. There is no eelgrass near the floating dock.

5. Oyster washing/conveying/sediment retention system.
    a. The plastic or stainless steel sediment retention basket will be approximately 3' X 4'. The basket will be located on the oyster washing pier nest to the oyster washing conveyor.
    b. No concrete is required for the oyster wash / sediment retention system.
    c. The sediment retained in the sediment basket will be stored near the shell piles and periodically hauled to an approved composting facility.
    d. System will be equipped with sealed bearings that do not require periodic lubrication.
6. Seawater intake system.
    a. The seawater intake replacement is no longer a part of the current project description.
7. Project Description.
    a. The project description has been amended to include the 12" X 18" trench and the picnic tables in the "after the fact development" section. The seed setting tanks that were not removed when the buildings were removed are already in the "after the fact" list.
8. Restroom facility.
    a. Restroom repairs necessary to comply with ADA requirements will require indoor plumbing.
    b. Restroom repairs do not require any trenching or ground disturbance.
9. Fences
    a. Approximately 200' of split rail fence is included in this application. To wood treatment or paint will be used on the split rail fence.
    b. Approximately 25' of 8' solid wood fence will be placed in front of the storage and processing containers to screen them from view. The fence will be painted to match the adjacent retail building.
    c. Approximately 100' of 4' wood fence will be placed around processing area to separate seashore visitors from the work area. The 4' wood fence will not be treated or painted.
10. Outdoor display aquarium.
    a. The aquarium is no longer a part of the current project description.
11. Paved walkway.
    a. This walkway is to provide safe access to the bathrooms to meet ADA standards. The walkway is 6' wide by 30' long in front of the processing building.
    b. The paved walkway will be surfaced with asphaltic concrete (asphalt) to match existing paved surfaces.
    c. A thickness of 0" to 8" of structural fill under the path is required to meet ADA slope requirements. No cuts or excavation will be required for path placement.
12. South pier removal.
    a. None of the south pier exists within the intertidal portion of Drakes Estero.
    b. 4" X 4" posts will be removed as well as the remaining portions of the deck.

c. The pier will be removed by hand. If the 4" X 4" posts are too difficult to remove by hand, a chain will be attached to the post and pulled out by a front end loader. No equipment will need to enter the intertidal area to remove any portion of the pier.

13. Underground electric lines.
    a. New underground electric lines are no longer a part of the current project description.
14. Implement vessel transit plan.
    a. 1" Schedule 40 PVC pipe may be placed vertically, by hand, to mark channels.
15. Repairs to oyster racks.
    a. All oyster racks may be repaired. Different racks will be in use at different times. Racks are often vacant for a period of time following harvest and before planting. Rack repairs are made during times that they are not being used for oyster cultivation.
16. Harbor seals.
    a. DBOC continues to comply with the 1992 interagency standards. DBOC also complies with the current NPS and CCC harbor seal protection measures.
17. Water system.
    a. DBOC operates Public Water System #2110510 regulated by the California Department of Public Health, Drinking Water Unit. DBOC's responsibilities include regular sampling and bacteriological testing, monitoring and reporting. The pump in the well is the only equipment required to operate the water system.

Please feel free to give me a call if you need any additional information.

Thank you,

Kevin Lunny

Encls: Project Description
Project Cost Estimates
Project Site Plan

DRAKES BAY OYSTER COMPANY
17171 Sir Francis Drake Blvd., Inverness, CA 94937

Project Description
10/30/09

Proposed New Site Development

1. Construct and install required ADA compliant restroom facility.
2. Construct and install split rail and solid board fencing around proposed storage area and retail facility.
3. Construct and install paved walkway to the restrooms to meet ADA requirements.
4. Demolish and remove existing wooden pier (south pier).
5. Implement Vessel Transit Plan with mooring areas and access lanes clearly marked.

Ongoing Maintenance for Existing Operation

6. Continue to carry out regular repairs and maintenance to existing oyster racks using only CDFG, CCC and NPS approved materials.
7. Continue compliance with 1992 Harbor Seal Management Plan as well as final CCC and NPS harbor seal protection conditions.
8. Continue to carry out oyster and clam culture using 24" x 24" x 3" plastic or plastic coated wire containers or trays.
9. Continue to use established boat traffic lanes through Drakes Estero eelgrass beds for use during low tide.
10. Continue to operate the picnic area.
11. Continue Pacific and European oyster culture using hanging cluster method on racks located throughout DFG lease area number M-438-01 within Drakes Estero.
12. Continue Pacific and European oyster culture using anchored bottom bags within intertidal areas throughout DFG lease area number M-438-01 within Drakes Estero
13. Continue Pacific and European oyster culture using un-anchored bottom bags within intertidal areas throughout DFG lease area number M-438-01 within Drakes Estero
14. Continue Pacific and European oyster culture using anchored floating bags within intertidal areas throughout Department of Fish and Game lease area number M-438-01 within Drakes Estero
15. Continue Manila clam culture using bottom bags within areas throughout DFG one-acre lease area number M-438-02 within Drakes Estero
16. Continue to carry out marine biotoxin monitoring and water quality sampling within the estero.
17. Continue to import Pacific oyster larvae and seed; Manila clam larvae and seed and European oyster larvae and seed, only from CDFG approved sources with current CDFG import permits.
18. Continue to operate motor driven vessels within estero to plant and harvest approved shellfish species, for water quality monitoring, marine biotoxin monitoring, or any other farm related purpose.
19. Continue to operate non-motorized barges within estero to facilitate shellfish planting and harvesting.
20. Continue to operate retail sales facility.
21. Continue to operate the only state certified and FDA approved shellfish shucking and packing facility, pursuant to the requirements of the California Department of Public Health, Food and Drug Branch; the US Food and Drug Administration and the National Shellfish Sanitation Program.
22. Continue to operate onsite wastewater and septic systems.

23. Continue to store limited quantities of hazardous substances such as paints, gasoline, chlorine, detergents, solvents and cleaning products.
24. Continue to discharge wastewater from hatchery operations, wet storage, setting systems and oyster washing into estero (heated water to remain below 20 degrees above ambient water temperature)
25. Continue to carry out interpretive services to visiting public, conduct tours of onshore facilities for school groups, local non-profit organizations, private organizations, government agencies, etc.
26. Continue to provide onsite housing for employees and their families.
27. Continue to operate indoor hatchery/seed production facility and carry out remote setting activities both indoor and outdoor.
28. Continue to implement the Hazardous Materials Business Plan.
29. Continue to operate the state certified Drakes Bay Oyster Company non-transient, non-community, public water system, pursuant to the requirements of the California Department of Public Health, Drinking Water Unit and the National Shellfish Sanitation Program.

Repairs

30. Repair existing wooden oyster washing pier with similar materials.
31. Replace existing 12' X 60' floating dock at the end of the oyster washing dock.
32. Replace oyster washing / conveyor / sediment retention system.
33. Repairs to stringing shed.
34. Repairs to hatchery building.
35. Repairs to processing building.
36. Repairs to retail sales building.

After the Fact Development

37. Installation of one 8-foot by 40-foot storage container.
38. Removal and replacement of a porch at worker residence.
39. Installation of split rail fence along the edge of parking area.
40. Installation of asphalt pavement surrounding the processing facility.
41. Installation of a temporary construction trailer.
42. Installation of a temporary 8-foot by 40-foot container for oyster shucking and packing.
43. Use of five outdoor seed setting tanks and associated water intake, discharge and circulation infrastructure.
44. Construction and backfilling of a 12-inch by 18-inch by 80-foot long trench.
45. Replacement of six picnic tables and six additional picnic tables

Cost Estimate	*Proposed New Site Development*
$20,000.00	1. Construct and install required ADA compliant restroom facility.
$2,500.00	2. Construct and install split rail and solid board fencing around proposed storage area and retail facility.
$600.00	3. Construct and install paved walkway to the restrooms to meet ADA requirements.
$400.00	4. Demolish and remove existing wooden pier (south pier).
$200.00	5. Implement Vessel Transit Plan with mooring areas and access lanes clearly marked.
$23,700.00	Total New Site Development

Ongoing Maintenance for Existing Operation

6. Continue to carry out regular repairs and maintenance to existing oyster racks using only CDFG, CCC and NPS a
7. Continue compliance with 1992 Harbor Seal Management Plan as well as final CCC and NPS harbor seal protecti
8. Continue to carry out oyster and clam culture using 24" x 24" x 3" plastic or plastic coated wire containers or tray
9. Continue to use established boat traffic lanes through Drakes Estero eelgrass beds for use during low tide.
10. Continue to operate the picnic area.
11. Continue Pacific and European oyster culture using hanging cluster method on racks located throughout DFG leas
12. Continue Pacific and European oyster culture using anchored bottom bags within intertidal areas throughout DFG
13. Continue Pacific and European oyster culture using un-anchored bottom bags within intertidal areas throughout D
14. Continue Pacific and European oyster culture using anchored floating bags within intertidal areas throughout Dep
15. Continue Manila clam culture using bottom bags within areas throughout DFG one-acre lease area number M-438
16. Continue to carry out marine biotoxin monitoring and water quality sampling within the estero.
17. Continue to import Pacific oyster larvae and seed; Manila clam larvae and seed and European oyster larvae and se
18. Continue to operate motor driven vessels within estero to plant and harvest approved shellfish species, for water q
19. Continue to operate non-motorized barges within estero to facilitate shellfish planting and harvesting.
20. Continue to operate retail sales facility.
21. Continue to operate the only state certified and FDA approved shellfish shucking and packing facility, pursuant to
22. Continue to operate onsite wastewater and septic systems.
23. Continue to store limited quantities of hazardous substances such as paints, gasoline, chlorine, detergents, solvent
24. Continue to discharge wastewater from hatchery operations, wet storage, setting systems and oyster washing into
25. Continue to carry out interpretive services to visiting public, conduct tours of onshore facilities for school groups,

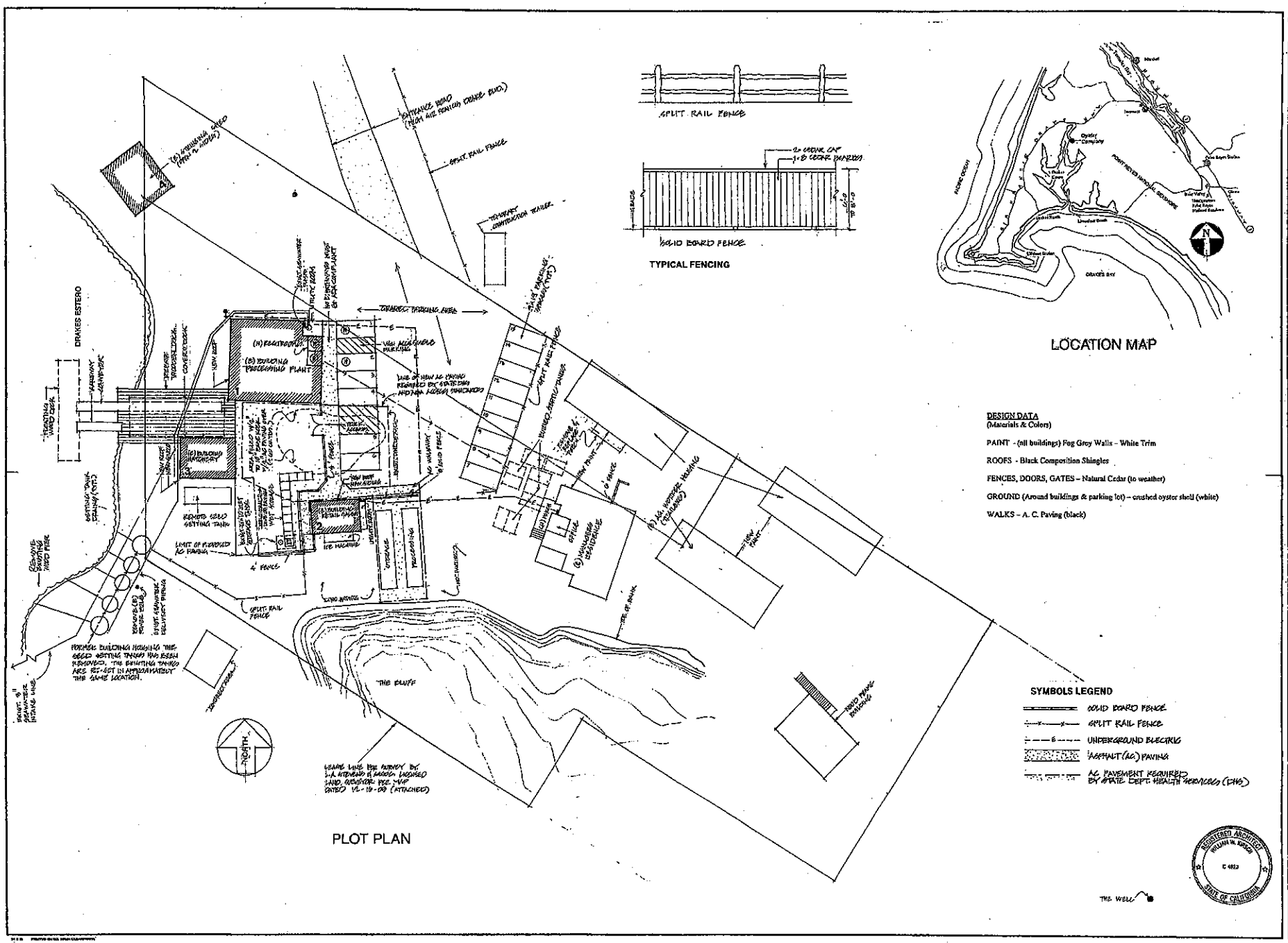
26. Continue to provide onsite housing for employees and their families.
27. Continue to operate indoor hatchery/seed production facility and carry out remote setting activities both indoor an
28. Continue to implement the Hazardous Materials Business Plan.
29. Continue to operate the state certified Drakes Bay Oyster Company non-transient, non-community, public water s

Repairs

$2,000.00	30. Repair existing wooden oyster washing pier with similar materials.
$5,000.00	31. Replace existing 12' X 60' floating dock at the end of the oyster washing dock.
$3,500.00	32. Replace oyster washing / conveyor / sediment retention system.
$500.00	33. Repairs to stringing shed.
$2,000.00	34. Repairs to hatchery building.
$5,000.00	35. Repairs to processing building.
$3,000.00	36. Repairs to retail sales building.
$21,000.00	Total Repairs

After the Fact Development

$1,200.00	37. Installation of one 8-foot by 40-foot storage container.
$800.00	38. Removal and replacement of a porch at worker residence.
$400.00	39. Installation of split rail fence along the edge of parking area.
$1,500.00	40. Installation of asphalt pavement surrounding the processing facility.
$500.00	41. Installation of a temporary construction trailer.
$8,000.00	42. Installation of a temporary 8-foot by 40-foot container for oyster shucking and packing.
$300.00	43. Use of five outdoor seed setting tanks and associated water intake, discharge and circulation infrastructure.
$600.00	44. Construction and backfilling of a 12-inch by 18-inch by 80-foot long trench.
$900.00	45. Replacement of six picnic tables and six additional picnic tables
$14,200.00	Total After the Fact Development
$58,900.00	Total Cost of Project



REVISIONS	BY
4-4-06	K
7-25-06	K
1-22-07	K
10-5-09	KL

WILLIAM W. KIRSCH
ARCHITECT (415)663-8867
P.O. BOX 1239 PT. REYES STA. CA. 94956

PLOT PLAN

RESTORATIONS FOR:
DRAKES BAY OYSTER CO.
17171 SIR FRANCIS DRAKE INVERNESS 94937
APN 109-190-17 & 21

Date	1-27-06
Scale	1"=20'
Drawn	WWK
Job	LUNNY
Sheet	1
Of	Sheets

Don Neubacher/PORE/NPS
10/29/2009 03:22 PM

To Ann Nelson/PORE/NPS@NPS
cc
bcc
Subject Fw: Clams in Drakes Estero

For files.

Don Neubacher
Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

415-464-5101 (office)
415-663-8132 (fax)

The National Park Service cares for special places saved by the American people so that all may experience our heritage.
----- Forwarded by Don Neubacher/PORE/NPS on 10/29/2009 03:22 PM -----

Kevin McKay/PORE/NPS
10/29/2009 02:41 PM

To Don Neubacher/PORE/NPS@NPS
cc
Subject Fw: Clams in Drakes Estero

FYI

Kevin E. McKay
Special Park Uses/Concessions
National Park Service
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, CA 94956
(415) 464-5111
Fax (415) 464-5182

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----- Forwarded by Kevin McKay/PORE/NPS on 10/29/2009 02:41 PM -----

"Kevin Lunny" <kevin@drakesbayoyster.com>
10/29/2009 02:36 PM MST

To: "'Tom Moore'" <tmoore@dfg.ca.gov>
cc: "'Cassidy Teufel'" <cteufel@coastal.ca.gov>, "'Kevin McKay'" <Kevin_McKay@nps.gov>
Subject: Clams in Drakes Estero

Dear Tom,

We have transferred all Manila clams that were not previously located on M-438-02 to M-438-02.

All Manila clams in Drakes Estero are located on M-438-02.

Thank you for your help,

Kevin Lunny
Drakes Bay Oyster Company

L1425
02-106

October 20, 2009

Mr. Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

Dear Kevin:

We are writing concerning the "Eighth Annual Slurp 'n Burp" commercial event at the Drakes Bay Oyster Company facility on September 13, 2009. We understand from the website regarding the event (see enclosed information), that it involved dinner and beverages for $55-$80 per person - $25 of which constituted a tax deductible donation to the American Institute of Wine and Food.

All activities which occur on National Park Service lands must be consistent with laws, NPS policies, and the park's enabling legislation and policies. We have attached a copy (Attachment 1) of the Code of Federal Regulations 36 CFR Chapter 1, Part 2, Section 2.50 which concerns Special Events. It specifies that all "entertainments, ceremonies and similar events" require a park permit.

The aquaculture permit for Drakes Bay Oyster Company (#MISC-8530-6000-8002) authorizes use of the permitted area for the "purpose of processing shellfish, the interpretation of shellfish cultivation to the visiting public and residential purposes incidental thereto." Any other commercial activities, such as fundraising dinners, therefore, constitute a Special Park Use and require a permit. We realize that you may be unaware of this requirement.

We commonly issue permits, with conditions to protect park resources, for special events in the Seashore. In the future, please contact Kevin McKay, Special Park Uses Coordinator, at 415-464-5111, to apply for a Special Use Permit prior to any such activities occurring or refer the event coordinator to him.

Thank you for your assistance.

Sincerely,

Don L. Neubacher
Superintendent

Enclosure

DLNeubacher/NGates:an 10/20/09

Attachment 1:

TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY

DEPARTMENT OF THE INTERIOR

PART 2--RESOURCE PROTECTION, PUBLIC USE AND RECREATION--Table of Contents

Sec. 2.50 Special events.

(a) Sports events, pageants, regattas, public spectator attractions, entertainments, ceremonies, and similar events are allowed: Provided, however, There is a meaningful association between the park area and the events, and the observance contributes to visitor understanding of the significance of the park area, and a permit therefore has been issued by the superintendent. A permit shall be denied if such activities would:

(1) Cause injury or damage to park resources; or

(2) Be contrary to the purposes for which the natural, historic, development and special use zones were established; or unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or commemorative zones.

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of National Park Service concessioners or contractors; or

(5) Present a clear and present danger to the public health and safety; or

(6) Result in significant conflict with other existing uses.

(b) An application for such a permit shall set forth the name of the applicant, the date, time, duration, nature and place of the proposed event, an estimate of the number of persons expected to attend, a statement of equipment and facilities to be used, and any other information required by the superintendent. The application shall be submitted so as to reach the superintendent at least 72 hours in advance of the proposed event.

(c) As a condition of permit issuance, the superintendent may require:

(1) The filing of a bond payable to the Director, in an amount adequate to cover costs such as restoration, rehabilitation, and cleanup of the area used, and other costs resulting from the special event. In lieu of a bond, a permittee may elect to deposit cash equal to the amount of the required bond.

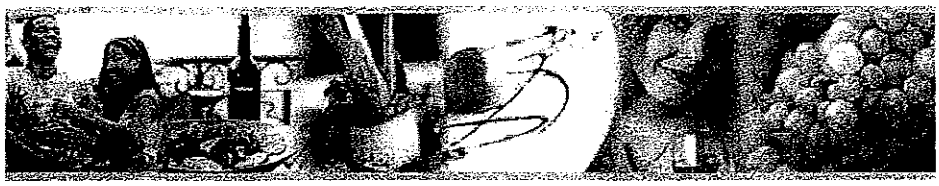
(2) In addition to the requirements of paragraph (c)(1) of this section, the acquisition of liability insurance in which the United States is named as co-insured in an amount sufficient to protect the

United States.

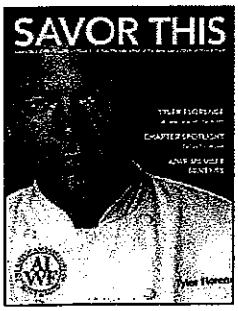
(d) The permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(e) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

[48 FR 30282, June 30, 1983; 48 FR 31847, July 11, 1983]



Click here to view the AIWF Newsletter



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800.274.2493 - toll free
831.250.7739 - main
831.622.7783 - facsimile

AIWF National Address:
26364 Carmel Rancho Lane,
Suite 201
Carmel, CA 93923

info@aiwf.org or Click here

8TH ANNUAL SLURP N' BURP- OYSTERS ON DRAKES BAY

Sunday, September 13, 2009 - AIWF NorCal (CA)
Time: 12:00 am to 04:00 pm
Member Price: $55.00
Guest Price: $80.00
Venue: Drakes Bay Family Oyster Farm
Address: 17171 Sir Francis Drake Blvd, Inverness, CA 94937

AIWF-NORCAL

invites you to

The Eighth Annual Slurp n' Burp

at

Drakes Bay Oyster Farm, Inverness CA

Sunday, September 13, 2009

Noon to 4:00 p.m.

$55 for members/$80 for guests*

Guests who join that day can apply the $25 towards AIWF membership

Yes, it's that time again! This year, join us at Drakes Bay Oyster Farm http://drakesbayfamilyfarms.com/ on September 13 for all-you-can-eat Drakes Estero oysters. A deep-water upwelling just off the coast of Drakes Bay provides cool, pristine, nutrient-rich water year-round, producing what many recognize as some of the finest oysters in the world. You'll also have the opportunity to enjoy a tour of this rustic working oyster farm. DrakesBay is named for Sir Francis Drake because it has long been considered Drake's most likely landing spot on the west coast of North America during his circumnavigation of the world by sea in 1579.

We'll also be serving Aidells sausages http://www.aidells.com/, salads, clams (if they're available) and other goodies, beer, compliments of Lagunitas IPA as well as wine donated and poured by Dee Vee Wines http://www.dvw.com/. Wines includeChâteau de l'Aulée Crémant de Loire Brut, 2006 Solter Rheingau Riesling Brut Sekt, 2008 Domaine des Lauriers Picpoul de Pinet, 2008 Château Gaillard AOC Touraine Sauvignon Blanc, 2008 Domaine de Villargeau Côteaux du Giennois Blanc. If people are interested they will have order forms and special discounts available! For a special treat, Redwood Hill Farm & Creamery http://www.redwoodhill.com/ will be there to offer their exquisite artisan goat cheeses. Join in the fun by preparing your food the way you like it, learn to shuck oysters, or just sit back and relax, make new friends and catch up with old ones, while you enjoy the wonderful view of Drakes Estero. Bring some cash --- to make it even more fun, we're having a raffle!

To pay by credit card (no additional fees), go to:
http://www.ticketweb.com/t3/sale/SaleEventDetail?dispatch=loadSelectionData&eventId=2409004

To pay by check, please leave a message on the AIWF hotline at 415-508-6790 and then send a check (payable to AIWF) to: AIWF, PO Box 2207, Sausalito, CA 94966-2207 along with your name, address, telephone number, email address, number of places desired, and names of others in your party.

New: Add $25 to your payment to support AIWF's signature program, Days of Taste®. The program brings chefs and farmers into fourth and fifth grade classrooms to teach students in an engaging way about the importance of fresh food and how these ingredients weave their way through daily life, from farm to table. AIWF is a 501(c)(3) charitable organization making this fully tax deductible.

Generous donations from these fine local purveyors help make this event memorable

Dee Vine Wines
Purveyors of Fine & Rare Wines

DELLA FATTORIA

LAGUNITAS BREWING Co

The AIWF would like to thank the following corporate sponsors:

PEBBLE BEACH FOOD & WINE

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Privacy Policy

The AIWF acknowledges web designer, CAMALEO, for their generous in-kind contribution to the AIWF website, perennial good humor, and endless patience. Thank you!

CAMALEO
web intelligence

Kevin McKay/PORE/NPS
10/15/2009 02:30 PM

To Don Neubacher/PORE/NPS@NPS
cc Ann Nelson/PORE/NPS@NPS
bcc
Subject Fw: DBOC Clam Issue

FYI

Kevin E. McKay
Special Park Uses/Concessions
National Park Service
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, CA 94956
(415) 464-5111
Fax (415) 464-5182

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----- Forwarded by Kevin McKay/PORE/NPS on 10/15/2009 02:29 PM -----

"Kevin Lunny" <kevin@drakesbayoyster.com>
10/15/2009 02:09 PM MST

To: "'Cassidy Teufel'" <cteufel@coastal.ca.gov>
cc: "'Tom Moore'" <tmoore@dfg.ca.gov>, "'Kevin McKay'" <Kevin_McKay@nps.gov>
Subject: RE: DBOC Clam Issue

No problem. I will keep everyone informed.

Kevin

From: Cassidy Teufel [mailto:cteufel@coastal.ca.gov]
Sent: Thursday, October 15, 2009 2:05 PM
To: Kevin Lunny
Cc: Tom Moore; Kevin McKay
Subject: RE: DBOC Clam Issue

Kevin –
Thank you for passing along this information and I support your efforts to bring DBOC into compliance with the existing terms and conditions of your DFG lease, NPS Special Use Permit and Coastal Commission Consent Order. I would appreciate it if you could notify me when you have completed relocating the clams to shellfish lease M-438-02.

Thanks,

Cassidy Teufel

California Coastal Commission
Energy, Ocean Resources and
Federal Consistency Division
45 Fremont St., Suite 2000
San Francisco, Ca 94105

T: (415) 904-5502
F: (415) 904-5400

-----Original Message-----
From: Kevin Lunny [mailto:kevin@drakesbayoyster.com]
Sent: Thursday, October 15, 2009 1:37 PM
To: Kevin McKay
Cc: Cassidy Teufel; 'Tom Moore'
Subject: DBOC Clam Issue

Hi Kevin,

Drakes Bay Oyster Company is pursuing CDFG approval for adding Manila clams to its main shellfish lease, M-438-01. Currently, M-438-02 includes Manila clam culture. This permission was asked for by the Johnson Oyster Company in 1993 and was approved. Inadvertently... were not sure why, the Manila clams were added to M-438-02 instead of M-438-01 (see attached). We are simply making the effort to correct what seems to be a clerical error. We are told that this issue will be included in the November California Fish and Game Commission meeting.

Our SUP states:

4 B)

vi) Permittee will not introduce species of shellfish beyond those described in the existing leases from the CDFG. Permittee may seek to conform and/or modify these leases with the CDFG. Any modifications approved by CDFG will be considered by Permitter on a case-by-case basis, and Permittee may not implement any such modifications without the prior written approval of the Permitter.

Our SUP also states:

i) Production of all shellfish species shall be capped at the "current production level" as determined under the California Coastal Commission Consent Order No. CCC-07-CD-04.

The production cap includes all species of shellfish. Adding Manila clams to M-438-01 will not allow any expansion in overall production. The Manila clams are bivalves as are oysters. Manila clams are grown using the same methods as oysters. They will simply use space that would otherwise be used for oyster production and will replace some of the oysters with clams in the overall production. This is basically a request to substitute species.

Both the Johnson Oyster Company and the Drakes Bay Oyster Company have historically grown Manila clams on M-438-01. Currently there are still some clams on M-438-01. To bring the oyster farm into full compliance with the NPS SUP and CDFG leases, DBOC will, within one week from today, 10/22/09, move any Manila clams not currently on M-438-02 to M-438-02.

We wanted to let you know about our plan. Please feel free to give me a call if you have any questions. When we have a confirmed agenda at the F&G Commission, I will send it to you.

Thank you,

Kevin Lunny

415-669-1149 (oyster farm)
415-662-9800 (office)

Don Neubacher/PORE/NPS
10/15/2009 02:38 PM

To Ann Nelson/PORE/NPS@NPS
cc
bcc
Subject Fw: DBOC Clam Issue

Don Neubacher
Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

415-464-5101 (office)
415-663-8132 (fax)

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----- Forwarded by Don Neubacher/PORE/NPS on 10/15/2009 02:38 PM -----

Kevin McKay/PORE/NPS
10/15/2009 01:54 PM

To Don Neubacher/PORE/NPS@NPS
cc
Subject Fw: DBOC Clam Issue

FYI

Kevin E. McKay
Special Park Uses/Concessions
National Park Service
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, CA 94956
(415) 464-5111
Fax (415) 464-5182

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----- Forwarded by Kevin McKay/PORE/NPS on 10/15/2009 01:54 PM -----

"Kevin Lunny" <kevin@drakesbayoyster.com>
10/15/2009 01:37 PM MST

To: "Kevin McKay" <Kevin_McKay@nps.gov>
cc: "'Cassidy Teufel'" <cteufel@coastal.ca.gov>, "'Tom Moore'" <tmoore@dfg.ca.gov>
Subject: DBOC Clam Issue

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Thank you,

Kevin Lunny

415-669-1149 (oyster farm)
415-662-9800 (office)

DFG and FGC docs relating to Manila clam request.pdf

From: Tom Moore
To: Devin Bartley; kevin@drakesbayoyster.com;
cc: Kirsten Ramey;
Subject: DFG and FGC docs relating to Manila clam request
Date: Wednesday, September 02, 2009 12:41:52 PM
Attachments: JOC Manila clam request 08-06-93 correspondance.pdf

---

Devin, Kevin,

See attached docs pertaining to the original Manila clam request for M-438-01 which shows FGC mistakenly placed on M-438-02

Tom

Thomas O. Moore
Calif. Dept. Fish and Game
Marine Aquaculture Coordinator,
P.O. Box 1560
Bodega Bay, CA 94923
(707) 875-4261
(707) 688-3192 cell
(707) 875-4269 FAX
tmoore@dfg.ca.gov
Due to the Governor's Executive Order, I will be off on Furlough the 1st, 2nd & 3rd Friday of each month

You will never find time for anything. If you want time you must make it. C. Buxton

F. ROBERT STUDDERT
ATTORNEY AT LAW

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION
9 AUG 93 11 50

REPLY TO NORTHGATE OFFICE

August 6, 1993

Robert R. Treanor
CALIFORNIA FISH & GAME
1416 Ninth Street, RM 1207-5
Sacramento, CA 94244

Re: Water Bottom Allotment Lease No. M-438-01
Johnson Oyster Company

Dear Bob:

Johnson Oyster Company would like to start culturing Manila Clams on the captioned lease in Drakes Estero. Accordingly, please consider this a request to add that species, Manila clams *(Venerupis japonica)*, to the other species specified at page 4 of the captioned allotment at the top of the page.

If memory serves correctly, we had been able to change the species cultured on other leases by administrative change rather than having to go to a noticed procedure. I would hope that the foregoing request could be processed in the same manager. Thank you for your usual courtesy and cooperation in this matter.

Very truly yours,

F. Robert Studdert

cc: Tom Johnson,
Johnson Oyster Company
Bob Hulbrock

FRS/lcv
JOC1*1
JOC1/2

NORTHGATE OFFICE: 36 PROFESSIONAL CENTER PARKWAY • SAN RAFAEL, CA 94903 • (415) 499-1155
WEST MARIN OFFICE: P.O. BOX 6 • INVERNESS, CA 94937 • (415) 663-8235
FAX: (415) 479-8416

October 18, 1993

Mr. Tom Johnson
Johnson Oyster Company
c/o F. Robert Studdert, Esq.
Northgate Office
36 Professional Center Parkway
San Rafael, CA 94903

Dear Mr. Johnson:

The Commission, at its October 8, 1993 meeting in San Diego, approved your request to add Manila clams (Tapes japonica) to the list of species for mariculture purposes at your Drakes Estero Lease M-438-02. You should be receiving your amended lease from the Department shortly.

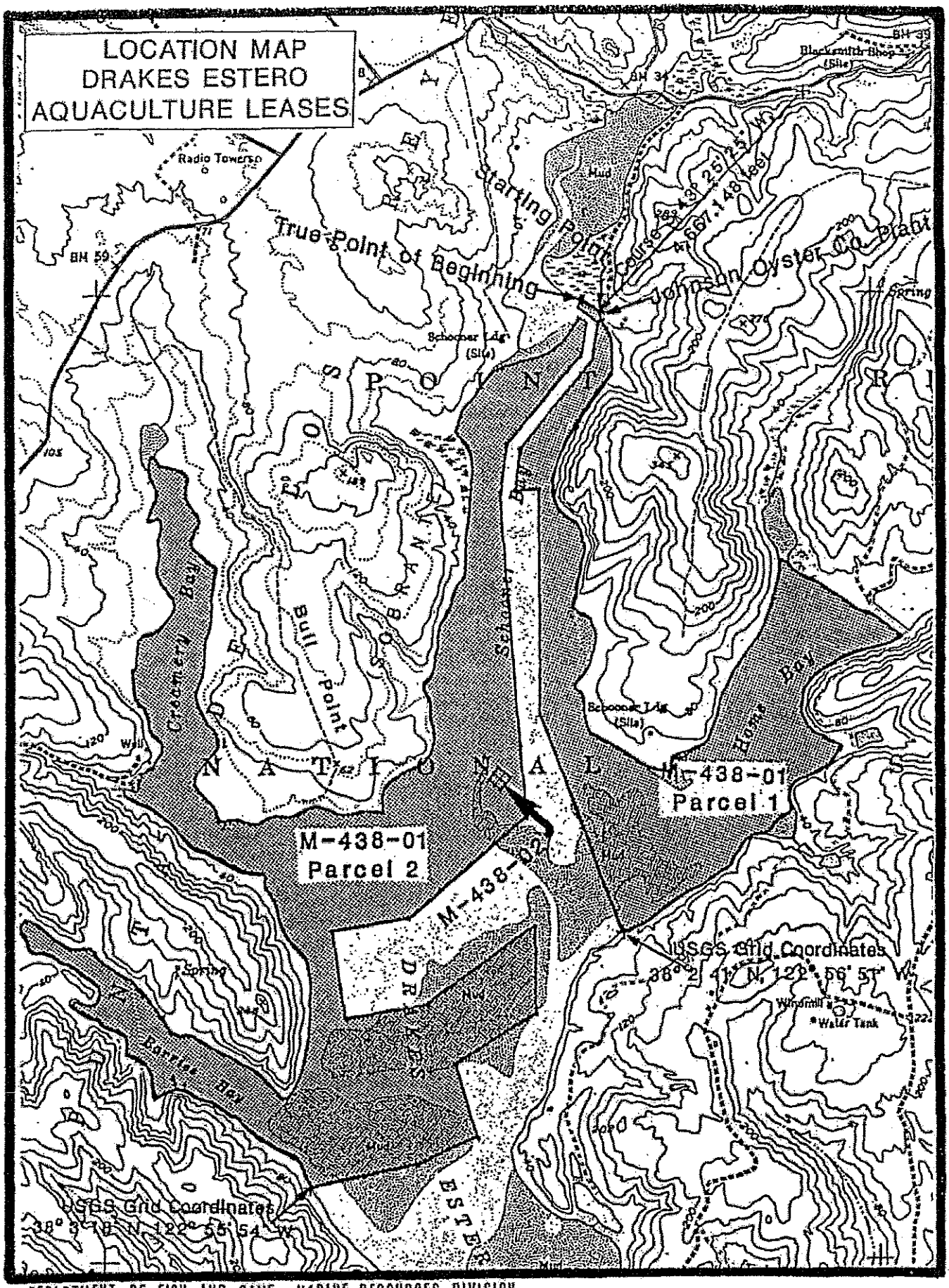
Sincerely,

COPY ORIGINAL SIGNED BY ROBERT R TREANOR

Robert R. Treanor
Executive Director

cc: Marine Resources Division
Region 3
Bob Hulbrock, Aquaculture Coordinator

OCT 19 1993



DEPARTMENT OF FISH AND GAME • MARINE RESOURCES DIVISION

Don Neubacher/PORE/NPS
10/15/2009 02:37 PM

To Ann Nelson/PORE/NPS@NPS
cc
bcc
Subject Fw: Additional CDP information

For files

Don Neubacher
Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

415-464-5101 (office)
415-663-8132 (fax)

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----- Forwarded by Don Neubacher/PORE/NPS on 10/15/2009 02:36 PM -----

Kevin McKay/PORE/NPS
10/15/2009 01:53 PM

To Don Neubacher/PORE/NPS@NPS
cc
Subject Fw: Additional CDP information

FYI

Kevin E. McKay
Special Park Uses/Concessions
National Park Service
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, CA 94956
(415) 464-5111
Fax (415) 464-5182

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----- Forwarded by Kevin McKay/PORE/NPS on 10/15/2009 01:52 PM -----

"Kevin Lunny" <kevin@drakesbayoyster.com>
10/15/2009 01:37 PM MST

To: "Kevin McKay" <Kevin_McKay@nps.gov>
cc:
Subject: FW: Additional CDP information

Kevin

This is to keep you current with the CCC CDP process.

Kevin

From: Kevin Lunny [mailto:kevin@drakesbayoyster.com]
Sent: Monday, October 05, 2009 1:59 PM
To: 'Cassidy Teufel'
Subject: Additional CDP information

Hi Cassidy,

We will send the revised site plan separately.

Kevin 20091005 CDP letter.pdf

DRAKES BAY OYSTER COMPANY
17171 Sir Francis Drake Blvd., Inverness, CA 94937

California Coastal Commission
Attn: Cassidy Teufel
45 Fremont Street, Suite 2000
San Francisco, CA 94105

October 5, 2009

RE: Coastal Development Permit Application No: 2-06-003

Dear Mr. Teufel,

Enclosed please find the additional documentation requested in your June 10, 2009 letter for permit application Number 2-06-003 for development at the Drakes Bay Oyster Farm; APN 109-130-17, located in Inverness, California. The operations at the Drakes Bay Oyster Farm are pursuant to vested rights but Drakes Bay Oyster Company agrees to submit to the commission's jurisdiction under reasonable terms.

Drakes Bay Oyster Company (DBOC) has reduced the scope of development proposed for the site. The new project description is broken into four categories:

Proposed New Site Development

1. Install one 8-foot by 20-foot refrigeration unit/container at the onshore site.
2. Construct and install required ADA compliant restroom facility.
3. Construct and install split rail and solid board fencing around proposed storage area and retail facility.
4. Install outdoor display aquarium for interpretive purposes.
5. Construct and install paved walkway to the restrooms to meet ADA requirements.
6. Remove existing power pole near setting tanks.
7. Remove existing power pole near processing building.
8. Demolish and remove existing wooden pier (south pier).
9. Install electricity lines below ground.
10. Implement Vessel Transit Plan with mooring areas and access lanes clearly marked.
11. Construction and backfilling of a 12-inch by 18-inch by 80-foot long trench.

Proposed changes in CDFG lease and shellfish culture operations

12. Amend list of cultured species permitted within DFG lease area number M-438-01 to include purple-hinged rock scallops (*Crassodoma gigantean* formerly *Hinnities multirugosus*) – contingent on DFG approval.
13. Amend list of cultured species permitted within DFG lease area number M-438-01 to include Manila clams (*Venerupis phillipinarum* formerly *Tapes japonica*) – contingent on DFG approval.
14. Collect wild purple hinged rock scallops for future use as broodstock with CDFG approval and CDFG Broodstock Collection Permit.
15. Development of hatchery process to spawn purple hinged rock scallops onsite and produce scallop "seed" with CDFG approval.
16. Modify boundaries of DFG lease area number M-438-01 to include oyster racks currently outside of lease area – contingent on DFG approval.

Ongoing Maintenance for Existing Operation

17. Continue to carry out regular repairs and maintenance to existing oyster racks using only CDFG, CCC and NPS approved materials.
18. Continue compliance with 1992 Harbor Seal Management Plan.
19. Continue to carry out oyster and clam culture using 24" x 24" x 3" plastic or plastic coated wire containers or trays.
20. Continue to use established boat traffic lanes through Drakes Estero eelgrass beds for use during low tide.
21. Continue to operate the picnic area.
22. Continue Pacific and European oyster culture using hanging cluster method on racks located throughout DFG lease area number M-438-01 within Drakes Estero.
23. Continue Pacific and European oyster culture using anchored bottom bags within intertidal areas throughout DFG lease area number M-438-01 within Drakes Estero
24. Continue Pacific and European oyster culture using un-anchored bottom bags within intertidal areas throughout DFG lease area number M-438-01 within Drakes Estero
25. Continue Pacific and European oyster culture using anchored floating bags within intertidal areas throughout Department of Fish and Game lease area number M-438-01 within Drakes Estero
26. Continue Manila clam culture using bottom bags within areas throughout DFG one-acre lease area number M-438-02 within Drakes Estero
27. Continue to carry out marine biotoxin monitoring and water quality sampling within the estero.
28. Continue to import Pacific oyster larvae and seed; Manila clam larvae and seed and European oyster larvae and seed, only from CDFG approved sources with current CDFG import permits.
29. Continue to operate motor driven vessels within estero to plant and harvest approved shellfish species, for water quality monitoring, marine biotoxin monitoring, or any other farm related purpose.
30. Continue to operate non-motorized barges within estero to facilitate shellfish planting and harvesting.
31. Continue to operate retail sales facility.
32. Continue to operate the only state certified and FDA approved shellfish shucking and packing facility, pursuant to the requirements of the California Department of Public Health, Food and Drug Branch; the US Food and Drug Administration and the National Shellfish Sanitation Program.
33. Continue to operate onsite wastewater and septic systems.
34. Continue to store limited quantities of hazardous substances such as paints, gasoline, chlorine, detergents, solvents and cleaning products.
35. Continue to discharge wastewater from hatchery operations, wet storage, setting systems and oyster washing into estero (heated water to remain below 20 degrees above ambient water temperature)
36. Continue to carry out interpretive services to visiting public, conduct tours of onshore facilities for school groups, local non-profit organizations, private organizations, government agencies, etc.
37. Continue to provide onsite housing for employees and their families.
38. Continue to operate indoor hatchery/seed production facility and carry out remote setting activities both indoor and outdoor.
39. Continue to implement the Hazardous Materials Business Plan.
40. Continue to operate the state certified Drakes Bay Oyster Company non-transient, non-community, public water system, pursuant to the requirements of the California

Department of Public Health, Drinking Water Unit and the National Shellfish Sanitation Program.

Repairs

41. Repair existing wooden oyster washing pier with similar materials.
42. Replace existing 12' X 60' floating dock at the end of the oyster washing dock.
43. Replace oyster washing / conveyor / sediment retention system.
44. Replace existing seawater intake system with two four-inch high-density-polyethylene pipes extending 1050-feet into the estero from shore and terminating in a 16 square foot screened intake structure.
45. Repairs to stringing shed.
46. Repairs to hatchery building.
47. Repairs to processing building.
48. Repairs to retail sales building.

After the Fact Development

49. Installation of one 8-foot by 40-foot storage container.
50. Removal and replacement of a porch at worker residence.
51. Installation of split rail fence along the edge of parking area.
52. Installation of asphalt pavement surrounding the processing facility.
53. Installation of a temporary construction trailer.
54. Installation of a temporary 8-foot by 40-foot container for oyster shucking and packing.
55. Use of five outdoor seed setting tanks and associated water intake, discharge and circulation infrastructure.

Seed Setting Tanks:

The five existing seed setting tanks were previously covered by a non-permitted open structure with no floor. CCC -03-CD-12 required that the open building be removed. To comply with the order, DBOC removed the cover structure, but did not remove the tanks. The tanks are currently in basically the same location. The setting tanks have been integral to the oyster operation for at least three decades and are still used almost continuously. For the business to continue, the tanks had to remain in operation. There was no reason to move the five tanks to a different location so DBOC did not substantially move the tanks. DBOC repaired or replaced some of the piping at the tanks and buried the bottom 2 feet of the light weight fiberglass tanks so that the wind would not blow them away. The underground pipe location is shown on the project drawings.

The seawater for the setting tanks is delivered by a 2" Schedule 40 PVC plastic pipe that is connected to the seawater intake and pump system. Each tank has the capacity of around 4500 gallons. During the setting season, each tank is used for oyster larvae setting approximately every two weeks. The tanks are filled once, heated to approximately 75 to 80 degrees Fahrenheit, and held at that temperature for approximately 4 days. On the 4th day, the heaters are turned off, allowing the water in the tanks to cool. On about the 5th day, raw seawater is pumped into the tanks at a rate of approximately 3 gallons per minute. At the end of the cycle, around 7 days, the fully cooled seawater is allowed to discharge from the tanks.

Proposed Boat Ramp Improvements:

No boat ramp exists at the DBOC facility and there are no plans to build a boat ramp.

Septic System:
At one time, DBOC was concerned that an existing gravity sewer pipeline, located in the existing parking area, did not have adequate slope to function properly. There has been no problem with the operation of this pipeline. Quarterly monitoring and annual on-site inspections are conducted by Marin County Environmental Health Services and a registered Sanitarian. The septic systems operated by DBOC are operating correctly and no repairs are required.

Existing Asphalt Pavement:
Most of the existing asphalt paving was an overlay of pre-existing asphalt paving. This paving was installed as required by the California Department of Public Health, Food and Drug Branch, to protect human health while transporting oysters between the walk-in refrigeration and the 8 X 40 shucking and packing facility. The NPS specified where the 8 X 40 processing container would be located and approved the requisite asphalt paving at a meeting on-site when the demand was given by the Health Department. At the time, DBOC was unaware of any requirement to obtain a CDP for this work. No one, including the several NPS officials present at the joint regulatory agency meeting, mentioned anything about a CDP requirement for the work.

The asphalt paving consists of 2" compacted thickness, ½" aggregate asphalt. In a small section, to conform to ADA regulations, up to 10" of class 2 aggregate base rock was used between the original surface and the new surface to reduce the slope of the top surface.

DBOC will remove existing (and pre-existing) paved surfaces as shown on project drawings. A portion of the parking area has been paved with asphalt since before DBOC began operations in 2005. None of the parking area will be paved with asphalt. It will be an oyster shell surface to match the existing, surrounding parking lot surfaces. Only work areas requiring impervious, hard surfaces will be paved. The final asphalt area to remain on site, as shown on plans, is less overall paved surface area than was covered in asphalt when DBOC took over operations in January, 2005.

Asphalt removal will be performed by saw cutting the existing asphalt at locations shown on the construction drawings. The pavement will be removed from site by a licensed carrier and will be delivered to an asphalt and concrete recycling facility.

South Pier Removal:
The South Pier was historically used by the oyster farm to load cultch bags from the setting tanks onto barges. The Pier was damaged by storms and would need repairs prior to continuing its traditional use. DBOC will remove the South Pier and limit the oyster farm to only one pier. The south pier will be demolished by hand and removed from site. All debris from the pier demolition will be transported to an approved landfill.

We understand that the CDFG issues need to be resolved as soon as possible. It is my understanding that these issues may be included on the November Fish and Game Commission meeting agenda. Hopefully, all of the outstanding issues will be resolved at that meeting.

Please feel free to give me a call if you need any additional information.

Thank you,

Kevin Lunny
Drakes Bay Oyster Company

Don Neubacher/PORE/NPS
10/15/2009 02:37 PM

To Ann Nelson/PORE/NPS@NPS
cc
bcc
Subject Fw: Coastal Development Permit site plan

Don Neubacher
Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

415-464-5101 (office)
415-663-8132 (fax)

The National Park Service cares for special places saved by the American people so that all may experience our heritage.
----- Forwarded by Don Neubacher/PORE/NPS on 10/15/2009 02:37 PM -----

Kevin McKay/PORE/NPS
10/15/2009 01:53 PM

To Don Neubacher/PORE/NPS@NPS
cc
Subject Fw: Coastal Development Permit site plan

FYI

Kevin E. McKay
Special Park Uses/Concessions
National Park Service
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, CA 94956
(415) 464-5111
Fax (415) 464-5182

EXPERIENCE YOUR AMERICA
The National Park Service cares for special places saved by the American people so that all may experience our heritage.
----- Forwarded by Kevin McKay/PORE/NPS on 10/15/2009 01:53 PM -----

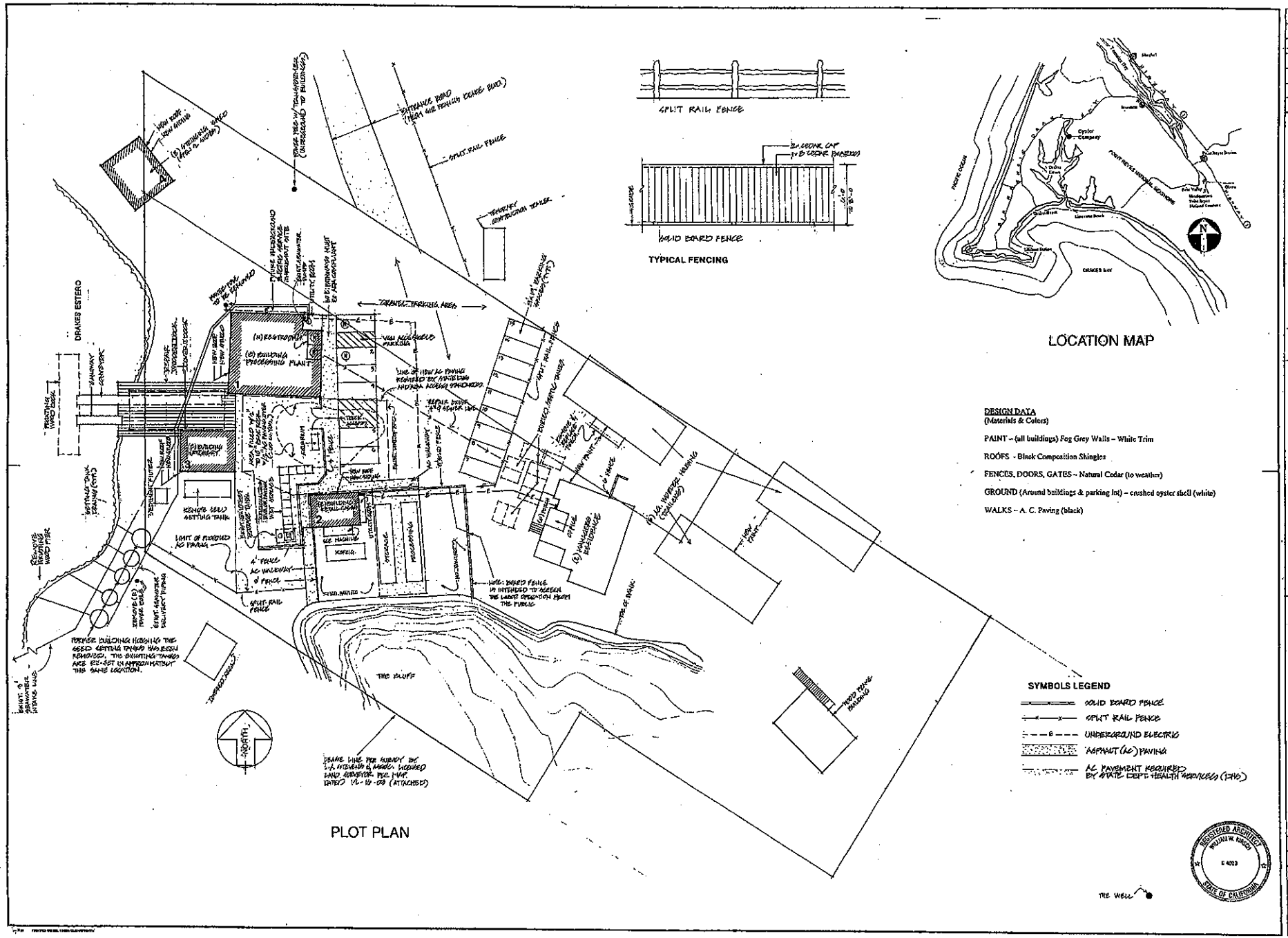
"Kevin Lunny" <kevin@drakesbayoyster.com>
10/15/2009 01:37 PM MST

To: "Kevin McKay" <Kevin_McKay@nps.gov>
cc:
Subject: Coastal Development Permit site plan

Kevin,

This is the revised site plan that we submitted to the CCC on 10/05/09.

Kevin CDP Site Plan Revision 10.05.09.pdf



REVISIONS	BY
4-4-06	K
1-25-06	K
1-22-07	K
10-5-09	KL

WILLIAM W. KIRSCH
ARCHITECT (415)663-8867
P.O. BOX 1239 PT. REYES STA. CA. 94956

PLOT PLAN

RESTORATIONS FOR:
DRAKES BAY OYSTER CO.
17171 SIR FRANCIS DRAKE INVERNESS 94937

APN 108-130-17

Date	1-27-05
Scale	1"=20'
Drawn	WWK
Job	LUNNY
Sheet	1
Of	Sheets

"Kevin Lunny"
<kevin@drakesbayoyster.com>
06/15/2009 06:29 PM

To <jon_jarvis@nps.gov>
cc "'Lunny, Nancy'" <nancy@drakesbayoyster.com>
bcc
Subject NRC Drakes Estero Report

History: This message has been forwarded.

Dear Mr. Jarvis,

Please review and respond to the attached letters. I have attached the letter that we sent to you on 05/11/09 for your convenience.

Thank you,

Kevin Lunny

DBOC to Jon Jarvis 06.15.09.pdf DBOC to Jon Jarvis 05.11.09.pdf

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1149
kevin@drakesbayoyster.com
nancy@drakesbayoyster.com

June 15, 2009

John Jarvis
Regional Director
National Park Service
1111 Jackson Street, Suite 700
Oakland, CA 94607

Dear Mr. Jarvis.

On May 11, we submitted a letter asking for an explanation of your public statements on behalf of the National Park Service in response to the release of the National Academy of Sciences' final report on NPS Science at Drakes Estero.

It has been more than a month.

Given your request to the National Academy of Sciences to change or modify their final report, which violates their rules, withholding responses while behind-the-door discussions take place is deeply disturbing.

May we have the courtesy of a response?

Sincerely,

Kevin Lunny Nancy Lunny

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1149
kevin@drakesbayoyster.com
nancy@drakesbayoyster.com

May 11, 2009

Jon Jarvis
Regional Director
National Park Service
1111 Jackson Street, Suite 700
Oakland, CA 94607

Dear Mr. Jarvis.

On May 5, 2009, in response to National Academy of Sciences Report on NPS science at Drakes Estero, the Pacific West Region of the National Park Service issued a press release entitled, *"Park Service to Use National Academy of Sciences Report to Improve Management of Drakes Estero."* You were also interviewed by the media on May 5 and over the subsequent few days and made several additional statements.

We acknowledge the Park Service apology and express our appreciation for it. That said, we are confused by certain statements that have been made and, by this letter, ask for clarifications.

(1) **NPS Rejects Unspecified NAS Conclusions**. According to an article in the Marin Independent Journal, "*Report: Point Reyes Oyster Farm Poses No Danger to the Estero,*" you said: "*we (NPS) agree with some conclusions, disagree with some and say we need more research too.*"

(A) Please itemize the NAS conclusions in which NPS concurs.

(B) Please itemize the NAS conclusions in which NPS "disagrees."

(C) Please provide a detailed explanation for those instances in which NPS disagrees and provide supporting data and documentation.

(2) **NPS Contradicts NAS, Renews Claims that Oysters in Drakes Estero Harming Environment**. According to an AP story published in the San Jose Mercury News,

entitled "Report Criticizes Feds Over Marin Oyster Farm:"

> *National Park Service officials said the non-native Pacific oysters raised by the farm are damaging the ecosystem.*
>
> *But the National Academy of Sciences says in its report that it found no major negative environmental impact. The panel also suggests that park officials misrepresented some of the facts to support their position. Park Service Director Jon Jarvis says he disagrees with some of those findings.*

(A) Please explain and detail how and why the National Academy is wrong.

(B) Notwithstanding NAS conclusions of no environmental harm, NPS still claims that non-native Pacific oysters are harming the environment at Drakes Estero. Please detail the harm. Provide the data that supports and substantiates that harm.

(3) **NPS Plan to Correct the Record with Marin County Board of Supervisors, Federal and State Agencies, the Citizens of Marin and the Public at Large**. According to an article published in the Point Reyes Light, "Park Service Abuses Data, Apologizes:"

> *In a press release, Jarvis wrote that the Academy affirmed [NPS's Science Advisor Sarah] Allen's conclusions [in the NPS Report, "Drakes Estero, A Sheltered Wilderness Estuary], but over the phone contradicted himself. "It's the conclusions that are debated," he said, "but not the raw data..."*
>
> *Still its determination that the park, "in some instances selectively presented, over interpreted, or misrepresented the available scientific information" approximates the definition of scientific misconduct as written in the federal register.*
>
> *"The allegations of scientific misconduct is based on there being intentional falsification of data," he (Jarvis) said. "Neither the IG nor the Academy found that. What they did find in both cases was overreaching."*
>
> *Jarvis declined to describe his plan for correcting the public record.*

(A) NPS testified, published, hand-delivered and otherwise disseminated information, reports, documents, data and reports that, according to the NAS "*in some instances selectively presented, over-interpreted, or misrepresented the available scientific information on DBOC operations by exaggerating the negative and*

overlooking potentially beneficial effects..." These reports, information, documents and data were provided to the Marin County Board of Supervisors, Congresswoman Woolsey, Senators Feinstein and Boxer, other locally elected officials, California Costal Commission, Marin Mammal Commission, California State Resources Agency, MLPA Task Force, California Department of Fish and Game, NOAA among others. Please detail your plan and timetable for correcting the public record with all parties and interests.

(B) According to the Inspector General's Report, NPS also provided the same flawed reports, information, documents and data to certain environmental groups including the Sierra Club, National Parks and Conservation Association (NPCA) and the Environmental Action Committee (EAC). These groups, today, are actively publishing, disseminating and/or are circulating this flawed and tainted scientific information. Please detail your plan and timetable for correcting the public record with these and other environmental groups.

(C) Please provide copies of the letters and documents in which the corrections are made.

(4) According to the NPS Pacific West Region News Release on May 5, 2009:

> *"Certainly, we apologize for the errors in our original document [Drakes Estero, A Sheltered Wilderness Estuary] and already have taken steps to correct them," Park Service Regional Director Jon Jarvis said. "We appreciate the thoroughness of the academy's report and especially that academy concurred with many of our conclusions in the final, corrected version of the report"*

(A) Identify each of the specific "*errors*" in the original document being referenced.

(B) Explain the "*steps being taken to correct them.*"

(C) You state, "*we appreciate...that the academy concurred with many of our conclusions in the final, corrected version of the report.*" To which "*conclusions*" are you referring? Itemize and detail.

(D) Your statement references the "*final, corrected version of the report.*" We are unfamiliar with such a document. Immediately after the NAS Report was published, we asked the NAS panel for this document and they were unable to provide it. Will you please provide us with a copy of the final, corrected version of the Drakes Estero report.

This has been an agonizing ordeal for our family. NPS, since we purchased the oyster farm in January 2005, has been making a sustained series of accusations, claims, and charges – ranging from environmental criminality to environmental harm. Now, it appears as if a "new generation"

of charges is emerging.

This is painfully unacceptable.

We were heartened by the NPS apology. But a few words in a press release, unfortunately, will not restore our good name -- and neither will it absolve NPS of its responsibility to take responsibility for the damage it has done to us and to itself. NPS must clean up the situation it has created for our family and our community, starting with correcting the record of false NPS claims.

We ask that you, in good faith, please clarify this immediately and provide detailed and complete answers to the questions set forth in this letter.

Sincerely,

Kevin Lunny Nancy Lunny

"Kevin Lunny"
<kevin@drakesbayoyster.com>
02/19/2009 01:18 PM

To "'Banks, Gina \(Feinstein\)'" <Gina_Banks@feinstein.senate.gov>, <jon_jarvis@nps.gov>, <kerry@alcnet.org>
cc "'Watts, John \(Feinstein\)'" <John_Watts@feinstein.senate.gov>, "'Molinari, Jim \(Feinstein\)'" <Jim_Molinari@feinstein.senate.gov>
bcc
Subject RE: draft agenda for tomorrow

Thank you, Gina,

Please send us any updates, changes or proposed amendments to the January 9th NPS/ALC relocation proposal. We will need this to prepare for tomorrow's meeting.

Kevin

From: Banks, Gina (Feinstein) [mailto:Gina_Banks@feinstein.senate.gov]
Sent: Thursday, February 19, 2009 12:46 PM
To: jon_jarvis@nps.gov; Kevin Lunny; kerry@alcnet.org
Cc: Watts, John (Feinstein); Molinari, Jim (Feinstein)
Subject: draft agenda for tomorrow

Hi everyone,

Attached is a draft agenda for tomorrow's meeting. There may be some additional changes. Please let me know if you have any questions.

Best,

Gina Banks
Director of Field Services
Office of U.S. Senator Dianne Feinstein
One Post Street, Suite 2450
San Francisco, CA 94104

Phone: (415) 393-0707
Fax: (415) 393-0710

United States Department of the Interior

NATIONAL PARK SERVICE
Point Reyes National Seashore
Point Reyes, California 94956

L3019
Tract 02-106 PORE

February 13, 2009

Mr. Kevin Lunny
dba. Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

Dear Kevin:

Enclosed is a copy of an appraisal completed by Yovino-Young Incorporated that determines the rental valuation for the well and septic system utilized by the Drakes Bay Oyster Company. The appraised value of $761.00 will be billed semi-annually in combination with the current $2,800.00 annual rent due under Special Use Permit MISC-8530-6000-8002, (SUP). The billing schedule contained in the SUP will commence this April with one half of the total annual $3,561.00 rent due on or before April and the remaining half due on or before November.

The first year billing will include catch up charges for rent beginning in April 2008. Please let us know if there is a particular way you would like to structure these initial payments. Kevin McKay, Special Park Uses Coordinator, can be contacted at (415) 464-5111 if you have any questions.

Sincerely,

Don L. Neubacher
Superintendent

KEMcKay:kem 2/13/09

Jon Jarvis/OAKLAND/NPS
01/07/2009 06:43 PM

To "George Turnbull" <George_Turnbull@nps.gov>, "Holly Bundock" <Holly_Bundock@nps.gov>, "Don Neubacher" <Don_Neubacher@nps.gov>
cc
bcc
Subject Fw: Drakes Bay Oyster Co.

Fyi

Sent from my BlackBerry Wireless Handheld
Jonathan B. Jarvis
Regional Director
Pacific West Region
510-817-1304 Oakland
206-220-4010 Seattle

----- Original Message -----
From: "Kevin Lunny" [kevin@drakesbayoyster.com]
Sent: 01/07/2009 04:25 PM PST
To: "'Devin Bartley'" <DBARTLEY@dfg.ca.gov>; "'Tom Moore'" <TMOORE@dfg.ca.gov>; <jim_molinari@feinstein.senate.gov>; David Graber; Jon Jarvis
Subject: RE: Drakes Bay Oyster Co.

Devin,

This will acknowledge your email and suggestion.

It appears that you were provided some information about what's unfolding, but not all of it.

On December 16, the Senator's office contacted me advising that they inserted an amendment into pending legislation that would codify my renewable permits with the NPS. The next day, December, 17, several members of Feinstein's staff, including her State Director, Jim Molinari, contacted me and said the Park Service knew about the pending amendment, and apparently in response, went to Senator Feinstein and announced that they had a comprehensive Tomales Bay Relocation Proposal and wanted me to consider it. I was informed that the Senator recommended that it be considered as well, but if it wasn't as good as or better than what we had in Drakes Estero, she would proceed with the amendment.

Given the Senator's request, I agreed to evaluate the proposal and was told to expect it shortly after the call. It did not arrive.

On Friday, December 19, I contacted the Senator's office and said, "hey folks, haven't heard anything." That generated another call from Feinstein staff in California and Washington. This time, I was informed that an unnamed NGO, not NPS, would be contacting me. Sure enough, Kerry O'Toole, President, American Lands Conservancy, called and asked to meet the following Tuesday, Christmas Eve and one of the busiest days of our work year. Notwithstanding the bad timing, I agreed to meet - conditionally, but insisted that I have the relocation proposal, have an opportunity to review it. O'Toole sent me a document - either later that day or Monday. It

detailed everything I would relinquish, but not a single detail about the relocation proposal. When I called her on Monday, she and I agreed to meet after the first of the year, with Kerry openly acknowledging that she was brand new to this, knew very little and needed time to put her arms around it. Within hours, I was accused of canceling the meeting and Jim Molinari strongly urged that the meeting occur. When we met, she had nothing to say about relocation.

Immediately after Christmas, Molinari called. He was startled when I told him that I didn't have a proposal. He assured me that I would have the proposal immediately. Further, he indicated that Senator Feinstein wanted to talk to me and we scheduled a telephone meeting the morning of December 30.

Senator Feinstein pushed me hard, and was almost critical for my failing to respond to the NPS proposal. She did not know that NPS had failed to produce the proposal - now 13 days after NPS said it would be sent to me within moments.

It is fair to say that the Senator was not pleased, surprised - and perhaps even stunned.

Based on earlier discussions with NPS, Senator Feinstein discussed with me the details of the pending proposal including leases for growing oysters, similar production, piers, on-shore facilities, a retail store, cannery and packing shed, worker housing. She also imposed an "equivalency standard," telling me that the NPS relocation proposal had to represent a situation that was as good as or better than what we have in Drakes Estero.

Senator Feinstein told me that the much-discussed relocation proposal would be in hand within hours, and directed her staff to make sure it happened.

It didn't happen. No proposal arrived on the 30th. As we were closing on New Year's Eve, I received an email, not with a relocation proposal, but a bare-bones multiple choice buy-out proposal. I was then expected to attend a meeting on January 2 to discuss it.

This week, I again explained to the Senator's office that the oft-discussed relocation proposal was nowhere to be seen.

Yesterday, Jim Molinari finally admitted to me that Jarvis had no proposal. Then, I get an invitation from you to attend another meeting to discuss the same thing.

It's January 7. It's been three weeks since a proposal was supposed to be "on-my-desk-within-the-hour." We have yet to see the NPS proposal and now learn it never existed.

Once NPS finalizes its proposal, based on the equivalency standard as represented, we will evaluate it. After that, and if appropriate, further discussions can then be scheduled. But to schedule a meeting in order to discuss a non-existent relocation proposal is inappropriate and premature.

In the meantime, CFDG needs to know that we have completed a review of a NPS presentation to the National Academy of Sciences and have now uncovered an entirely new generation of made-up science. NPS falsified key data upon which their report is based. We are finalizing our research now and it will be released shortly.

Devin, please don't misinterpret these comments. You and your agency are responding to Jarvis and others. I have no problem with that. The NPS

handling of this matter has been less than appropriate.

Kevin

-----Original Message-----
From: Devin Bartley [mailto:DBARTLEY@dfg.ca.gov]
Sent: Tuesday, January 06, 2009 2:33 PM
To: Tom Moore; kevin@drakesbayoyster.com; jim_molinari@feinstein.senate.gov; david_graber@nps.gov; jon_jarvis@nps.gov
Subject: Drakes Bay Oyster Co.

Dear colleagues,

We are trying to arrange a meeting where we can all sit together and discuss objectives, plans, options and constraints to resolving the issues surrounding DBOC. I understand time is tight and we should try to have a meeting as soon as possible. Tom and I are both available after 2 on Friday, 9 January. Would it be possible to meet somewhere in Marin county, Friday afternoon to avoid SF traffic. I regret I have no specific venue in mind, but there must be a convenient office of coffee shop. I know John is traveling, but I understand someone else from NPS would attend. If this time is inconvenient please let me know what would work for you all.
My available dates are:
Thurs 8 Jan 9-11;
Fri 9 Jan all day
Mon 12 Jan 1-5
Thurs 15 Jan 1-5;
Then I am gone until 9 Feb.
It may not be necessary for both Tom and I to be there if scheduling gets too difficult.
Please let me know asap what could work for you and if you have creative ideas for a venue.
Regards,
Devin

Devin M. Bartley, PhD
State Aquaculture Coordinator
Department of Fish and Game
1416 9th Street
12th Floor
Sacramento, CA 95814
Tel. Office: (916) 651 7824
Cell: (916) 202 0317
dbartley@dfg.ca.gov

Jon Jarvis/OAKLAND/NPS
12/31/2008 02:45 PM

To "Kerry O'Toole" <Kerry@alcnet.org>, Jim_Molinari@feinstein.senate.gov, Kevin@drakesbayoyster.
cc
bcc Don Neubacher/PORE/NPS@NPS
Subject meeting on Friday location, 2:00 PM

Jim, Kerry and Kevin:

Our meeting location on Friday is NOT at Cavallo Point. On such as short notice, I could not get a room. Instead I have got a meeting room nearby out near Rodeo Beach at the Headlands Institute. We will stilll be on the Marin side of the Golden Gate Bridge.

For refresher on getting out to Rodeo Beach / Fort Cronkhite / Headlands Insitute Campus- it is at the very end of Bunker Road, which intersects with Alexander Avenue, the road into Sausalito just north of the GG Bridge. From the north, take the off-ramp just before getting onto the bridge, then curve to the right, back under 101 and one stop sign, then left at the signs for Cavallo Point, US Coast Guard. Go to the tunnel entrance, hope the light is green, and blitz on through.

From the south, once over the GG Bridge, take the first real exit (after the bridge vista point) - Alexander Avenue, and drop down hill to the left turn to the tunnel.

Through the one-way Baker-Barry tunnel and keep going on Bunker Road, turn up hill and to the right just as you get to the beach, and then an immediate left (Stennis, I think, if it's even signed) and park in the east parking lot, which is right next to the Marine Lab (Building 1111) where the Coast Room is the eastern-most end of the building and is marked on the map / photo with the square around it.

I have the room reserved for two hours and will get there early to wave everyone in.

My cell is 510-541-9288 but reception is weak out there. See you Friday.

Jonathan B. Jarvis
Regional Director
Pacific West Region
510-817-1304 Oakland

Map to Coast Room, Headlands Institute.JPG

"Kevin Lunny"
<kevin@drakesbayoyster.com>
11/17/2008 05:35 PM

To <Don_Neubacher@nps.gov>
cc
bcc
Subject RE: Saturday Morning 11/15/08 NPS visit

Don,

Thank you for the response. Our staff was sure that it was a NPS uniform. Our staff was either mistaken or the photographer was sent from somewhere in the NPS besides PRNS.

THANK YOU for taking care of the grading of the oyster farm driveway. Great improvement. If we were allowed to perform regular maintenance to the driveway as was customary in the past, the road would not reach this level of disrepair and it would be less burdensome to PRNS maintenance staff.

Kevin

-----Original Message-----
From: Don_Neubacher@nps.gov [mailto:Don_Neubacher@nps.gov]
Sent: Monday, November 17, 2008 1:24 PM
To: Kevin Lunny
Subject: Re: Saturday Morning 11/15/08 NPS visit

Kevin, I checked with law enforcement and other park staff this morning and discussed this issue at our staff meeting. No one knew of any park staff visiting the site on Saturday morning. Also, Point Reyes NS does not have a government black car. In addition, no senior staff member asked anyone to go to the oyster processing facilities.

We assume it was another agency visiting the area. On another subject, we bladed the entrance road on Friday to ensure it was in good shape for the warm weather.

Don

Don Neubacher
Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

415-464-5101 (office)
415-663-8132 (fax)

The National Park Service cares for special places saved by the American people so that all may experience our heritage.

"Kevin Lunny"
<kevin@drakesbayoyster.com>

To
"'Don Neubacher \(E-mail\)'"

11/15/2008 02:30 PM <don_neubacher@nps.gov>

cc

Subject
Saturday Morning 11/15/08 NPS visit

Don,

This morning, a Saturday morning, at around 7:30 AM a NPS employee (in uniform) arrived at the oyster farm in an unmarked black car with US Govt. plates. The oyster farm staff was busy with regular duties - removing cultch with seed from the setting tanks. The NPS official began to photograph the oyster farm employees while they were working. The workers were very uncomfortable with the position that the NPS official put them in. They told me that they felt intimidated because the NPS official made no effort to introduce himself or state the purpose of the visit.

One would expect the NPS to use common decency and let our staff know why he was there and why he was photographing them at work.

What were the instructions given to the NPS employee that arrived at the oyster farm this morning?
Why was he there on a Saturday morning at 7:30?
What is the purpose of the photographs?
Why was no notification given to DBOC before the visit?

Sincerely,

Kevin Lunny

Don Neubacher/PORE/NPS
11/17/2008 01:24 PM

To "Kevin Lunny" <kevin@drakesbayoyster.com>
cc
bcc Jon Jarvis/OAKLAND/NPS
Subject Re: Saturday Morning 11/15/08 NPS visit

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11/15/2008 02:30 PM

To "'Don Neubacher \(E-mail\)'" <don_neubacher@nps.gov>
cc
Subject Saturday Morning 11/15/08 NPS visit

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Why was he there on a Saturday morning at 7:30?
What is the purpose of the photographs?

Why was no notification given to DBOC before the visit?

Sincerely,

Kevin Lunny

L1425
02-106

November 4, 2008

Mr. Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

Dear Kevin:

Per your request, we are enclosing a copy of the paper "Modeling the effects of El Nino...Drakes Estero, California: 1997-2007".

Sincerely,

Don L. Neubacher
Superintendent

Enclosure

an 11/04/08

"Daryl Boness"
<mmsci@megalink.net>
10/16/2008 08:56 AM

To <Ben_Becker@nps.gov>
cc "Marine Mammal Science" <marinemammalscience@gmail.com>
bcc
Subject Decision on "Modeling the effects of El Niño, density dependence,and disturbance on harbor seal counts..."

History: This message has been replied to.

Dear Dr. Becker:

I have now received input from some of the original reviewers and Associate Editor on your replies to the concerns and questions raised by Dr. Corey Goodman (and others with similar points being made) concerning your in press paper entitled "Modeling the effects of El Niño, density dependence, and disturbance on harbor seal counts in Drakes Estero, California: 19972007." I have also spoken (or emailed) with Dr. Susan Roberts of the NRC and Dr. Tom Moore of the California Fish & Game. I am satisfied that there is no basis for considering pulling your paper from Marine Mammal Science for ethical grounds (scientific misconduct). The reviews I received based on your responses to Dr. Goodman's questions and your new analyses suggest there is no need to even revise your manuscript before publication should be allowed. I concur with the reviewers that the paper should be allowed to move forward with publication, but I also believe it would be best to include the updated information and improved analyses that you have proposed in your emails to me. In the revised paper, you should acknowledge the questioned data point and at least note that the conclusions would not change whether this point is included or not. Since you have information available on the 2008 harbor seal and oyster harvest levels I would also like to see you include in the discussion a statement about how this might affect your conclusions. It would be helpful if you identified in the revised paper where you have made the substantive changes as you indicate you will in your email replies.

I will process your revised paper as quickly as possible once I receive it. I appreciate your cooperation in this unusual situation regarding your paper that was accepted for publication in Marine Mammal Science.

Sincerely,

Daryl J. Boness
Editor
Marine Mammal Science

"Daryl Boness"
<mmsci@megalink.net>
10/25/2008 08:23 AM

To <Ben_Becker@nps.gov>
cc "Marine Mammal Science"
<marinemammalscience@gmail.com>
bcc
Subject re: MMSCI-2668.R1/MMS 234(additional changes) - decision

History: This message has been replied to.

Dear Dr. Becker

I have made a couple of minor editorial corrections, but otherwise am satisfied with the changes you have made. I believe these revisions have improved your paper and appreciate the effort you have made to address the concerns. You can now consider the paper accepted once again.

I am pasting in below the standard letter following acceptance of a manuscript to be sure you know that you have to send Rick Henley a final revised manuscript in proper format. If you need the usual attached documents that go with this letter, email Rick to get them. In talking with Rick we have decided we will keep your acceptance date as that associated with the acceptance of MMSCI.R1 since that determines the order of publication. As long as you turn around the final submission reasonably quicly your paper should still appear in the next issue.

Sincerely,
Daryl J. Boness
Editor
Marine Mammal Science

Previous letter sent to you at the acceptance of MMSCI-2668.R1:

I am very pleased to inform you that your revised Article entitled "MODELING THE EFFECTS OF EL NIÑO, DENSITY-DEPENDENCE, AND DISTURBANCE ON HARBOR SEAL (PHOCA VITULINA) COUNTS IN DRAKES ESTERO, CALIFORNIA: 1997 - 2007" has been accepted for publication in Marine Mammal Science.

In order to proceed with publication we will need your final text file in Word with any tables and figure captions included in this Word file. Refer to the guidelines and checklist attached for assistance with style and formatting. Please save line artwork (vector graphics) as high resolution Encapsulated PostScript (EPS) or PDF files. The lines should still appear sharp when zoomed to 400% final size. Save bitmap files (halftones or photographic images) as Tagged Image Format (TIFF) files, with a resolution of at least 600 dpi at final size. Symbols and abbreviations must follow journal style. More detailed information on the preparation of electronic artwork can be found at
http://www.blackwellpublishing.com/bauthor/illustration.asp.

Once the final manuscript and figures are prepared, please submit them by e-mail to marinemammalscience@gmail.com. Files that are formatted incorrectly will be returned for correction. Please seek assistance with the preparation of your figures if you cannot create high resolution files in the correct format. Submitting low resolution files will delay the publication of your manuscript.

Color figures must be specified and paid for in advance of publication. The

PRE PAGE PROOFS – NOT FINAL COPY

LRH: MARINE MAMMAL SCIENCE, VOL. 00, NO. 0, 2009

RRH: BECKER *ET AL.*: MODELING HARBOR SEAL DISTURBANCE

Modeling the effects of El Niño, density-dependence, and disturbance on harbor seal (*Phoca vitulina*) counts in Drakes Estero, California: 1997--2007

BENJAMIN H. BECKER

Pacific Coast Science and Learning Center,

Point Reyes National Seashore,

1 Bear Valley Road,

Point Reyes Station, California 94956, U.S.A.

E-mail: ben_becker@nps.gov

DAVID T. PRESS

Inventory and Monitoring Program,

Point Reyes National Seashore,

1 Bear Valley Road,

Point Reyes Station, California 94956, U.S.A.

SARAH G. ALLEN

Point Reyes National Seashore,

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1 Bear Valley Road,

Point Reyes Station, California 94956, U.S.A.

ABSTRACT

Harbor seal (*Phoca vitulina*) haul-out site use may be affected by natural or anthropogenic factors. Here, we use an 11-yr (1997--2007) study of a seal colony located near a mariculture operation in Drakes Estero, California, to test for natural (El Niño-Southern Oscillation (ENSO), density-dependence, long-term trends) and anthropogenic (disturbance or displacement related to oyster production activities) factors that may influence the use of haul out subsites. Annual mariculture related seal disturbance rates increased significantly with increases in oyster harvest (r_s = 0.55). Using generalized linear models ranked by best fit and Akaike's Information Criteria, ENSO and oyster production (as a proxy for disturbance/displacement) best explained the patterns of seal use at all three subsites near the mariculture operations, with effects being stronger at the two subsites closest to operations. Conversely, density-dependence and linear trend effects poorly explained the counts at these subsites. We conclude that a combination of ENSO and mariculture activities best explain the patterns of seal haul-out use during the

breeding/pupping season at the seal haul-out sites closest to oyster activities.

Key words: information-theoretic, AIC, *Phoca vitulina*, harbor seal, disturbance, Point Reyes, Drakes Estero, El Niño, density-dependence, mariculture.

The Pacific harbor seal (*Phoca vitulina richardii*) ranges along the eastern Pacific from Baja California to Alaska, and in north-central coastal California, they are the dominant and only year-round resident pinniped (Sydeman and Allen 1999, Burns 2002). The population at Point Reyes, California represents the second largest concentration of harbor seals in the State of California, accounting for about 20% of the mainland breeding population, and the most seals per haul out site in the state occur between 37.5° and 38.0°N.[1] Much of the Point Reyes coastal zone remains relatively pristine within a national park, and provides diverse marine and terrestrial habitat for seals to rest, molt, feed, and breed where human encroachment is minimal, in contrast to urbanized locations nearby such as San Francisco Bay (Sydeman and Allen 1999, Grigg *et al.* 2004).

Harbor seals are unusual for a large marine predator because they occur almost exclusively in nearshore habitats, and as a pinniped, they come onshore at traditional terrestrial sites to breed and rest (Burns 2002). Typically, seals attend haul out sites year round and spend about 33%--55% of their time onshore (Yochem *et al.* 1987, Allen Miller 1988). The number of seals present at any given haul-out site is influenced by several factors including time of day, tide level, current

The Point Reyes peninsula, along the north-central California Coast, extends from Tomales Bay (38°30'N) south to Bolinas Lagoon (37°30'N). The peninsula is located within the Point Reyes National Seashore and adjacent to the Gulf of the Farallones National Marine Sanctuary. The topographic diversity of this coastal zone provides a broad range of substrates for harbor seals to haul out of the water. These include tidal mud flats, offshore and onshore rocky tidal ledges, and sandy beaches. A "haul-out site" is defined as a terrestrial location where seals aggregate for periods of rest, birthing, and suckling of young (Harvey 1987). A colony site may be a collection of haul-out sites within a limited geographic area. Drakes Estero and Estero de Limantour encompass a complex of eight subsites where seals haul out (Fig. 1), which are referred to collectively as the Drakes Estero/Limantour colony. Seals use the subsites at various times of the year depending upon their reproductive status, molting condition, and the level of disturbance encountered (Allen Miller 1988). All subsites are used during the breeding and molt seasons, and some are used regularly year-round. Females with pups have disproportionately used the sand bars exposed at low tide in the upper and middle portions of the Estero that are isolated from the mainland, and

consequently from humans and predators. Limantour Spit was mostly used by non-breeding seals during the breeding season (Allen Miller 1988). Subsites in the middle-lower estero, which are generally closer or attached to the mainland, have historically suffered higher human disturbance rates when compared to the isolated island sandbars of the upper estero.

Human access to the seal haul-out sites within Drakes Estero was limited because it is part of a national park and a congressionally designated wilderness area. During the breeding season (1 March--1 July), no boats were allowed within the Estero except for the non-conforming (to congressionally designated wilderness) uses by a commercial oyster operation. Three of the subsites where seals haul out are proximate to this commercial oyster operation (UEF, OB, and UEN). Subsite OB is within the oyster lease but was not used much for oyster culture in the recent past (1999--2004), portions of subsite UEN were within or adjacent to the lease, and subsite UEF was in a navigational channel that bisects a gap in the oyster lease where oyster boats traversed Drakes Estero (Fig. 1).

Oyster production and oyster culture methods used within the estuary have varied over the past 50 yr. However, the primary methods included oyster racks (measuring approximately 3

× 30 m each), stakes, and bags (each measuring 0.5 × 1 m). In 2007 most of the racks were distributed in the upper portion of the estuary and >1,000 oyster bags (estimated) were distributed along the margins of the estuary, on intertidal sandbars in the center of the bay and in Home and Creamery Bays (Fig. 1).[3] Oyster production levels were high between 1981 and 1998 (annual production ranged from 3 to 9 million oysters per year) and reduced between 1999 and 2005 (annual production <2 million oysters per year). Production then increased to about 3.5 million (~136,000 kg) oysters in 2006, and ~211,000 kg oysters for 2007 (Fig. 2A, B).[4, 5]

Surveys

The National Park Service (NPS) conducted surveys of harbor seals throughout the year from 1996 to 2007, but surveys were more frequent during breeding (1 March--30 May) and molting (1 June to 1 August) seasons (2--4 times per week, depending on weather). Trained volunteers and NPS staff conducted surveys at medium to low tides (below 2.5 ft [0.76 m]) during the day. Surveys were not conducted in heavy fog or rain because of poor visibility. NPS data collection began in 1996 but we were not able to completely discern all subsite count data in that first year since a few subsites were grouped on some surveys. We

therefore analyzed disturbance data from 1996--2008, and count data from 1997--2007.

Surveys were designed to capture the seasonal peak numbers at several of the Point Reyes seal colonies, including the Drakes Estero/Limantour colony, and to detect disturbances that might affect seasonal peak numbers at each colony. Survey periods lasted at least two hours, with counts occurring every half-hour. Each subsite was surveyed separately, and added to other subsites to obtain a total count for the entire colony. All subsites were visible from one survey location. For each subsite, the observer recorded the total number of adult/immature seals, pups, and dead pups present. Because of the difficulty in distinguishing adult from immature seals, these two groups were combined. Pups were the young of the year and, after weaning, were difficult to distinguish from yearling seals. Consequently, pup numbers were reliable only from 1 March to 1 June. Surveys were conducted with binoculars and a 40--50× monocular spotting scope from a bluff on the western edge of Drakes Estero (Fig. 1).

Disturbances of the seals were recorded during each survey, and within a survey, multiple disturbances could occur. We defined disturbance as any activity that elicited a reaction by

the seals; which was either a head alert, a flush towards water, or flush into water. Disturbance rate (# disturbance events / # surveys during March--July of each year) was analyzed from 1996--2008 for the upper estero subsites and we tested for a correlation in mariculture related disturbance rate in relation to annual oyster harvest using a 1-tailed Spearman ranks test. We also used a non-parametric Wilcoxon rank test to see if oyster harvest differed in years with or without mariculture related disturbances. To be conservative, if two or more activities (*e.g.*, oyster boat and a kayak) appeared to cause a seal disturbance, the event was categorized as "non-oyster" related.

Data Preparation

We selected count data from Drakes Estero within the historical peak of the pupping season (15 April--15 May) during 1997--2007. These data were then filtered to remove: (1) data from observers with less than one year of survey experience, (2) observations at tide levels above +2 ft (+0.61 m) (MLW) when fewer seals would be present because some subsites might be submerged (Allen Miller 1988, Grigg *et al*. 2004), and (3) observation dates where weather reduced visibility. Tide level and tide time were standardized to the Golden Gate Bridge, San

Francisco (PST). To ensure that variation in tide levels ≤2 ft (0.61 m) did not affect counts, we tested for correlations between tide level and counts at all of the eight subsites and found no relationships (Spearman ranks test, all $r_s < |0.24|$, $n = 104$). Temporal autocorrelation plots of means by year indicated no significant autocorrelations at any time lag (all $r < 0.5$). The data from all 104 surveys used in this analysis were checked for accuracy against the raw data forms and by comparing subsite data with the sum of counts from the full Estero. Between 6 and 15 surveys (mean = 9.5 ± 2.9) were completed in each year during this period. We also graphically compared pupping season counts with the five other primary local harbor seal colonies within 30 km of Drakes Estero from 2000 to 2007 to provide a regional context.

Analyses

We hypothesized that there could be four potential effects on counts at two of the subsites closest to the mariculture operation in the upper estero (OB and UEN): (1) year as a linear trend through time, (2) density-dependence, defined as total seal counts in the middle-lower Estero away from mariculture operations (L, A, A1, DEM, DBS), (3) years since the last ENSO event (1991--1992 and 1997--1998;

http://www.pmel.noaa.gov/tao/elnino/), and (4) mariculture activity measured as the weight of oysters harvested ($\times 10^5$ lbs) during the same year. We assumed that the oyster harvest variable represented the combined effects from boat traffic, human activity, and oyster bag placement that may displace or disturb seals. Candidate models included between one and three of the above factors; year and ENSO were not used in the same models since both represent time and they were correlated. Density-dependence data was limited to the middle-lower estero counts since the upper estero subsites were being modeled as dependent variables and including them would lead to lack of independence between independent and dependent variables. For example, if oyster harvest was impacting any of the upper estero subsite counts, then using those counts as independent variables in the model would lead to a lack of independence. This could result in using overlapping data in both the independent and dependent variables.

To investigate the robustness of the models to how density-dependence was calculated, we also investigated density-dependence effects on an annual (mean) basis (in addition to daily, as described above). Similarly, we also investigated modeling oyster harvest with a 1-yr time lag. Since time from

oyster planting to harvest is about 18 mo, any effects due to harvest levels could potentially begin to be expressed sometime during the 18 mo prior to harvest.[5, 6] However, in Drakes Estero, most oyster related activity occurs near seal haul-out sites OB and UEN for only 3--4 mo prior to harvest.[7] Consequently, we focus on *same* year oyster harvest effects in the analyses and results. Lastly, we considered lowest tide height during the survey as an additional covariate. Linear mixed-effects models were also tested using ENSO as a random effect.

For analyses of total counts at subsites OB and UEN, we built generalized linear models (GLM). Daily counts were overdispersed (*i.e.*, variance greater than the mean and increasing with the mean), and we therefore used a negative binomial distribution to model the data (Venables and Ripley 2002, Insightful Corp. 2003, Crawley 2005) and ranked each model using Akaike's Information Criterion corrected for small sample sizes (AIC_c) (Burnham and Anderson 2002). Lower AIC_c values indicate a more parsimonious model that better explains the pattern in the data while penalizing the addition of trivial parameters. For the negative binomial distribution, we used a maximum likelihood estimation of θ (shape parameter for the negative binomial distribution) for both UEN and OB using the

glm.nb function in S-Plus (GLM with negative binomial distribution) (Venables and Ripley 2002). These values (1.0 for OB and 1.6 for UEN) were subsequently used in all GLM models because θ must be kept constant to compare maximum likelihood (and hence AIC_c) between models using the same dataset (Venables and Ripley 2002). We report the ΔAIC_c value, Akaike weights (w_i), and pseudo r^2 (Maddalla 1983) to present the level of confidence in each model.

To validate the best model at OB, we used the best fitting GLM model parameters to predict counts at UEF using a scaling parameter that divided the mean counts at UEF from 1997--2007 (26.4) by the mean counts at OB (83.6) for the same period (ratio = 0.32). We then compared the predicted and actual counts at UEF for each year using a Pearson correlation. Lastly, we constructed a regression tree with the software program R to illustrate and test the interactions between independent variables (year, ENSO, density-dependence, and oyster harvest in the same year) on combined OB and UEF harbor seal counts. Statistical analyses were done with S-Plus 6.2 (Insightful Corp. 2003) or R 2.7.2 (R Development Core Team 2008) using the MASS library (Venables and Ripley 2002).

RESULTS

Seal attendance varied at all three upper Drakes Estero subsites from 1997--2007; however, the amount of change varied amongst the subsites. At subsite OB, both the maximum and mean counts for seals and pups were lower from 1998--2001, higher from 2002--2004, and then lower for 2004--2007. Oyster harvesting showed a U-shaped pattern, declining in the early part of the study period and increasing in 2005 (Fig. 2A).

Disturbance rates in the upper estero (subsites OB, UEF, UEN) significantly increased with oyster harvest ($r_s = 0.55$, $P < 0.03$). This correlation is highly robust to sample size. For example, there was still a significant positive correlation ($r_s = 0.53$, $P < 0.04$) of disturbance rate with oyster harvest even when removing the 2006 disturbance, four of the 2007 disturbances (including two disturbances on one day in 2007 that the mariculture company challenged), and four of the 1996 disturbances (nine total) from the analysis. Similarly, oyster harvest levels in years with oyster related disturbances were significantly higher ($U = 43$, $n = 13$, $P_{1\text{-tail}} < 0.04$). Only one mariculture related disturbance was recorded in the middle-lower estero during the study. This was at subsite A in 2003 and was likely due to a state mandated water quality testing trip.

The best GLM model to explain seal counts at OB (w_i = 0.65) included years since ENSO and oyster harvest (Table 1). The coefficients indicated that seal counts had a positive relationship with years since ENSO and a negative relationship with oyster harvest (Table 2). The second ranked model (oyster + ENSO + Density-dependence) was similar to the first model with the inclusion of density-dependence as a non-significant variable (w_i = 0.32). Thus, the top two models had a total w_i of 0.97 and consisted primarily of years since ENSO and oyster harvest. Pseudo r^2 was moderate (0.37-0.38) for these two best models and declined rapidly thereafter to <0.29 for the remaining models.

Predicted counts at UEF using the scaled best fit/lowest AIC_c model from OB fit well (r = 0.66, P < 0.04), strongly suggesting that similar processes (ENSO and oyster harvest) were driving the counts at both OB and UEF (Fig. 3A). In fact, all years except the highest oyster harvest years (1997, 2006, 2007) fit extremely well. The only significantly correlated (P < 0.05) variables were year and ENSO (r_s = 0.89), and ENSO and subsite OB counts (r_s = 0.64). Daily density-dependence was not correlated with counts at OB (r_s = -0.12), but mean annual density-

dependence was using ranks tests (r_s = 0.65) but not Pearson tests (r_p = 0.43, P > 0.18).

Using density-dependence as an annual mean rather than a daily value and/or oyster harvest with a 1-year lag effect still resulted in oyster harvest (with a significant negative coefficient) being included in all of the best (lowest AIC_c / highest r^2) models at OB. For example, if considering density-dependence on an *annual* mean basis, (not shown in tables), the best model included density-dependence, ENSO and oyster harvest (same year) all as significant (P < 0.004) variables and oyster harvest still had a negative coefficient similar to that in Table 2. However, removing oyster harvest from the model increased AIC by ~6.7, indicating that failing to consider oyster harvest results in a model with much lower confidence (Burnham and Anderson 2002). Tide height effects were not important in any models and did not appear in the highest ranking models. Linear mixed-effects models (termed non-nested or crossed random effects) (Faraway 2006) using ENSO as a random factor also resulted in a significant negative oyster harvest coefficient. Model results were also not affected by including components for temporal autocorrelation. Residual plots for the

GLMs showed no issues with homoscedasticity or increasing variance.

Models for subsite UEN, which is farther from the oyster operations, all had poorer fit than OB (all pseudo $r^2 < 0.17$), but oyster harvest and ENSO were once again in the best (lowest AIC_c) model with an Akaike weight of 0.41 (Fig. 3B, Table 1). However, the model containing only year as an explanatory variable ranked second and had an Akaike weight of 0.20, which partially reduces our confidence in the top model.

The regression tree for counts at OB and UEF combined also confirmed the patterns found by the GLMs. ENSO explained much of the variation, and an increase in oyster harvest explained the significantly lower counts (from 255 ± 62 seals down to 118 ± 62) once ENSO effects had subsided (Fig. 4). The tree was grown until additional nodes had a negligible (<5%) additional reduction in model deviance. Residual plots of the regression tree model indicated that the model was sound.

Five other colonies in the region showed a different pattern than Drakes Estero subsites UEF, UEN, and OB, as well as Drakes Estero as a whole (Fig. 5). Bolinas Lagoon, Tomales Bay, and Duxbury Reef showed stable populations during the time series. The Double Point haul-out site suffered from an

aggressive male elephant seal (*Mirounga augustirostrus*) in 2003 that killed approximately 40 (mostly female) and chronically harassed 100s of harbor seals throughout the breeding season. Coincidentally, the Drakes Estero colony had an abrupt peak in 2003, possibly due to movement of some of the seals from Double Point. The Tomales Point colony showed a small increase over time. Finally, middle-lower Drakes Estero counts (used to analyze density-dependence in this paper: subsites A, A1, DEM, DBS, and L) were relatively stable from 2000 to 2006, and similar to the entire estero, had a one-year peak in 2003 that may have been related to the displaced seals from nearby Double Point, and then a small decline in 2007.

DISCUSSION

Pinnipeds, and harbor seals in particular, are vulnerable to human disturbance at haul-out sites where they rest, molt and raise their young (Seuront and Prinzivalli 2005, Grigg *et al.* 2002, Perry *et al.* 2002, Suryan and Harvey 1999, Allen *et al.* 1984, Kenyon 1972). Determining the level of effect from human activities, though, is difficult because of confounding factors such as environmental variables and multiple disturbance sources. Additionally, many studies are of short duration, focusing on short-term issues and do not account for factors

such as density-dependence on long-term trends of populations (Johnson and Acevedo-Gutierrez 2007, Perry *et al.* 2002, Grigg *et al.* 2002).

This study illustrates the utility of concurrently modeling anthropogenic and environmental factors using *a priori* hypotheses and information-theoretic (i.e., AIC) model selection to explain observed patterns in wildlife counts. Here, we provide evidence that from 1997 to 2007 seal counts at Drakes Estero subsites OB and UEF increased after the last ENSO and then declined with an increase in mariculture activities around 2005. The strong ENSO in 1998 had widespread ramifications for many upper trophic level predators in the California current, and in harbor seals, who may forego breeding and pupping in years of low available forage while spending more time foraging (Lee *et al.* 2007, Grigg *et al.* 2004, Benson *et al.* 2002, Sydeman and Allen 1999, Trillmich and Ono 1991). The upper estero subsites were used mainly for pupping and molting because they are islands, and therefore generally have lower human and natural disturbance rates.

Mariculture operations likely began increasing by 2005 to generate the increases in harvesting seen in 2006 and 2007, as time from oyster planting to harvest is typically around 18 mo

in Drakes Estero, with the latter 3--4 months being in areas closer to seal haul out sites OB and UEF. This is consistent with observations that there was little or no oyster equipment (*e.g.*, bags) near the OB sandbars from the summer of 2002 to the summer of 2004 (DTP, unpublished data). Also, aerial imagery from August of 2005 shows oyster bags on the west end of sandbar OB. After April 2007, there were extensive oyster equipment arrays and bags in this area (Fig. 1). The disturbance data and oyster landings (Fig. 2B, Table 1) suggest that increasing mariculture activities resulted in some combination of increased disturbance from boat traffic, human presence on sand bars, and/or physical displacement of seals from the sandbars by oyster growing equipment. While disturbance would likely occur primarily at low tides when seals were hauled out, surveys that count seals and record disturbance events were only completed during a small fraction of the year (typically <50 d per year, each survey 2--4 h), so all types of disturbance were likely underestimated here. Studies from Washington found that disturbance events that flush seals into the water only resulted in a return to previous numbers 39% of the time (Suryan and Harvey 1999), and results from nearby Bolinas Lagoon were similar (Allen *et al.* 1984). Other studies have indicated that

465 females with pups may be more vigilant and sensitive to disturbance, and this also may have contributed to the sharp decline of seals at the subsite (OB) in Drakes Estero where mostly females and pups occurred (Lucas and Stobo 2000, Suryan and Harvey 1999, Stein 1989). Such disturbance events in Drakes
470 Estero at OB and UEF appear to have produced effects that were detectable during the entire pupping season via reduced seal counts. However, simple displacement due to mariculture activities or equipment without actual disturbance events may equally be driving the patterns observed at OB and UEF.

475 The similar count pattern and good model fit observed at subsite UEF (Fig. 3A) suggests that the same factors were driving counts at both OB and UEF. However, the predictive model also showed that the subsites appeared to decouple when oyster harvest was high (1997, 2006, 2007, and perhaps 2008). This
480 suggests that UEF and OB covary strongly in the absence of high oyster harvest levels. Conversely, it appears that when oyster harvest was high, the subsites (OB and UEF) fell out of sync due to mariculture related disturbance or displacement events. Curiously, there is no consistent directionality in this
485 decoupling pattern (Fig. 3A). Alternatively, this decoupling could be related to poorer model fit at the beginning and end of

the time series, but since time (year) was not a variable selected or used in the model, this seems unlikely.

Counts at subsite UEN, which is slightly further away from mariculture operations, nonetheless showed a significant, but muted response to ENSO and oyster harvesting. While several other subsites in the estero vary with changes in sandbar morphology, disturbance, predators, and other environmental factors, subsites OB and UEF (and UEN) suffered no such physical changes other than an increase in nearby mariculture use. The generally poor fit for all of the UEN models suggests that other unmodeled factors (including interactions among subsites) may affect counts there more than ENSO, density-dependence, or oyster harvest. Additional processes that might influence the seal counts at UEN include 1) seals are typically farther from oyster operations than those at OB and UEF and thus less susceptible to disturbance, and/or 2) some seals may have moved from OB or UEF to UEN upon being displaced by oyster operations. Distance from a disturbance source has often been documented as contributing to whether seals respond to a human activity (Johnson and Acevedo-Gutierrez 2007, Suryan and Harvey 1999, Allen *et al.* 1984). Furthermore, changes in sandbar morphology in the middle-lower Estero, might also have affected counts in

the upper estero because of redistribution of seals. For example, counts at subsite A in the middle estero (Fig. 1) declined dramatically from 2004--2007, due to a naturally shifting sandbar that allowed predator (coyote, *Canis latrans*) access to the site. The displaced seals appeared to move to other subsites in the estero (for example, subsite A1 increased dramatically as A declined), and this process may have also had a confounding impact on the counts at UEN. Clearly, the variation at UEN is not very well explained by our candidate models and unknown processes such as interactions among subsites in the Estero may be partially driving counts at UEN. Additionally, variation in tidal height should not affect the counts since all surveys were conducted at low tides, and multiple counts were conducted during each survey, with only the highest count recorded and analyzed here.

Modeling density-dependence should also control for larger scale regional impacts such as the poorly understood oceanographic anomalies in the California Current reported in 2005 and 2006 that depressed food for many seabirds (Barth *et al.* 2007). For example, if ocean conditions depressed seal density in Drakes Estero and this in turn caused less use of OB or UEF due to density-dependent effects, then density-dependence

should have presented a better (more parsimonious) explanation of the data than "ENSO" and "Oyster" (Table 1). This would similarly address any covariation of counts in Drakes Estero compared to other harbor seal haul-out sites in north-central California due to unexplained interannual variation (Fig. 5). While mean total harbor seal counts in all of Drakes Estero increased from 2000 to 2003 (from ~700 to 1,200 individuals), and then declined from 2003 to 2007 (back down to ~750 individuals), ENSO and oyster harvesting still explained the data much better than density-dependence (Tables 1 and 2). This is likely because the middle-lower estero counts were somewhat more stable (Fig. 5). The one year spike in 2003 was likely due to displaced seals from Double Point moving to Drakes Estero. There was also a small unexplained decline in 2007.

The significant decline in adults and pups at OB after 2004 suggests that oyster harvesting influenced these numbers; however, the GLM models were fit to actual data, so it would be inappropriate to predict if seals at OB would have continued to increase or asymptote after 2004 in the absence of increasing oyster harvesting. In fact, a square-root (diminishing effects) transformation for ENSO may have also been a reasonable *a priori* test. Nonetheless, while long-term studies in Washington and

Oregon noted density-dependence effects at harbor seal colonies (Brown *et al.* 2005, Jeffries *et al.* 2005), the data for subsite OB in Drakes Estero were most consistent with the hypothesis that a significant portion of the reduced seal count during 2005--2007 was related to the increase in oyster harvesting.

Further evidence for the negative effect of oyster harvest levels on counts at subsites OB and UEF comes from the limited data available for 1996. These counts were not used in the GLM or tree models due to incomplete data, however, five surveys during the peak pupping season showed a mean count for OB of only 47 ± 39 (similar to 1997, 2005, and 2007) during the highest oyster harvest year (587,000 lbs) and the highest disturbance rate during the study (Fig. 2B).

The 2008 pupping season presented an opportunity to investigate the immediate effect of a change in oyster operations. In 2008, the California Coastal Commission (CCC) imposed a seal protection zone which restricted some use of the lateral channel adjacent to OB by oyster boats during the pupping season. Thus, boat use in the lateral channel in 2008 was curtailed from use levels during 2005--2007, and concurrently, mean counts at OB increased from about 61 ± 10 (SE) in 2007 to 81 ± 12 in 2008 despite a nominal increase in

oyster harvest, from 466,000 lbs in 2007 to a projected 493,000 lbs in 2008. The restriction of oyster operations also coincided with only one mariculture related disturbance detected in the upper estero in 2008 (versus six in 2007) (Fig. 2B), suggesting that conditions that previously reduced pupping season seal counts may have partially abated due to CCC restrictions.

We therefore suggest that an adaptive management approach for oyster operations be investigated since reducing activity in the area close to seals may have had immediate positive effects. This also suggests that while oyster harvest was a good proxy for impacts on seal counts in the upper estero for 1997--2007, changes in operations such as those experienced in 2008 may make the oyster harvest proxy less useful in the future. For this reason, it is not appropriate to include the 2008 data in the models because of this large change in management.

In conclusion, patterns observed in Drakes Estero at upper estero subsites OB and UEF (and potentially UEN) are best explained by ENSO and increased disturbance from oyster harvest activities. The ability of the OB model to predict counts at subsite UEF suggests that similar processes are occurring at both subsites and that the modeling techniques are robust. The results of this study also contribute to a limited body of

literature on the potential negative effects of mariculture on marine mammals. Watson-Capps and Mann (2005) found that oyster farming in coastal waters off Australia reduced use by bottlenose dolphins (*Tursiops* sp.) even though the facility had open areas that presumably would allow dolphins to pass. Such conflicts may increase in the future if mariculture replaces wild ocean harvesting due to the worldwide decline in wild fish stocks (Worm *et al.* 2006).

This study illustrates the benefits of long-term studies for understanding multiple anthropogenic and environmental factors that can affect pinniped populations and productivity (Thompson *et al.* 2001, Richardson *et al.* 1995). It also demonstrates how chronic disturbance activities, in this case associated with a mariculture operation, can lead to displacement of seals at haul-out sites, resulting in animals either shifting to alternate subsites or leaving the area. Kenyon (1972) noted for the monk seal (*Monachus schauinslandi*) that such losses likely led to net population losses because of the lack of suitable breeding habitat. If harbor seals in the region are at environmental carrying capacity, then loss of pupping sites within Drakes Estero also might conceivably lead to population loss. Finally, our results suggest that an

important part of managing for protection of pinnipeds may be to provide a higher level of protection around breeding habitat which is not currently protected under the U.S. Marine Mammal Protection Act (www.nmfs.noaa.gov/pr/laws/mmpa).

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FIGURE LEGENDS

Figure 1. Oyster bag areas (mapped in spring of 2007), oyster racks, and the eight seal haul out subsites (*e.g.*, OB) in Drakes Estero. UEF, OB, and UEN are considered upper Estero. Subsites A, A1, DBS, DEM, and L are in the middle-lower Estero and not subject to disturbance from mariculture. All surveys were completed from the bluffs indicated by the "survey location" marker.

Figure 2. (A) Mean (±1 SE) counts of harbor seals at Drakes Estero subsite OB and oysters harvested from Drakes Estero during 1997--2007. 1998 was an El Niño year. (B) Relationship between annual oyster harvest and mariculture related disturbance rate from 1996--2008. Text adjacent to points indicates the year, the number of disturbances in that year, and the number of surveys. Between 37 and 50 surveys were conducted each year from 1997--2005. During 1997--1998, oyster harvest rate was rapidly declining which may have diminished some of the factors that lead to disturbance.

Figure 3. (A) Predicted and actual (from the best fitting generalized linear model at OB) mean counts of pups and adults from 1997--2007 at subsite UEF. The 2008 data point is not derived from the model (it is actual data) or used the

correlation test. It is only shown to illustrate that seals in 2008 appear to be returning to more normal covariation between OB and UEF. (B) Mean seal counts from 1997--2007 at subsite UEN during the 15 April--15 May pupping season. Error bars represent the standard error for the total count.

Figure 4. Regression tree illustrating how ENSO and oyster harvest interact to best explain seal counts at subsites UEF and OB. The number of seals for each survey is represented by a dot histogram along the x-axis in each box, with points at the origin indicating a zero count and points to the right of the box indicating larger counts. This model agrees closely with the GLM results in Table 1.

Figure 5. Mean (±1 SE) counts of pups and adults during the pupping season (15 April--15 May) from 2000 to 2007 at Drakes Estero and five regional sites within 30 km. Dark bars on the Drakes Estero panel represent only the middle-lower estero counts used for calculating density-dependence in the GLM and regression tree models.

FOOTNOTES

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Table 1. Ranking of candidate models at subsites OB and UEN by AIC_c and Akaike weights (w_i). The dependent variable is the count of total seals at subsite OB and independent variables are year as linear trend (Year), Density-dependence (DenDep: daily sum of seals in the middle-lower estero), years since last El Niño event (ENSO), and lbs of oysters harvested in the same year (Oyst). Column headings are: small sample AIC (AIC_c), distance from best model (Δ_i), and Akaike weight (w_i); n = 104 for all models.

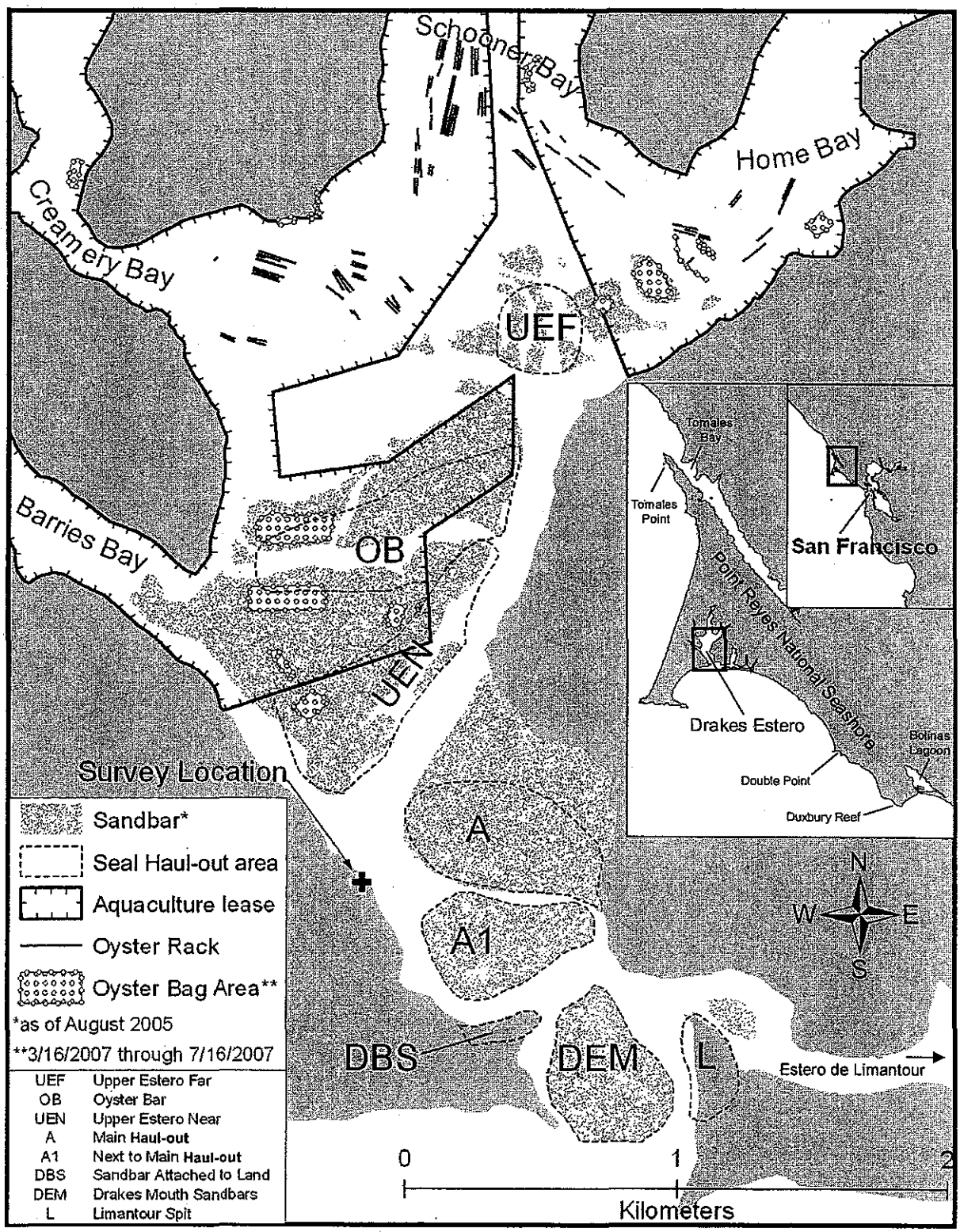
Model	AIC_c	Δ_i	w_i	r^2
Subsite OB				
Oyst + ENSO	332.96	0.00	0.65	0.37
Oyst + ENSO + DenDep	334.38	1.42	0.32	0.38
ENSO	340.36	7.40	0.02	0.25
ENSO + DenDep	340.70	7.74	0.01	0.28
Year	344.90	16.53	0.00	0.19
DenDep	353.16	20.20	0.00	0.07
Oyst	353.22	20.26	0.00	0.05
Oyst + DenDep	353.42	20.47	0.00	0.11
Null	353.68	20.72	0.00	0.05
Subsite UEN				
Oyst + ENSO	320.19	0.00	0.41	0.16
Year	321.68	1.49	0.20	0.10

Oyst + ENSO + DenDep	322.34	2.15	0.14	0.16
ENSO + DenDep	322.66	2.47	0.12	0.12
ENSO	323.20	3.01	0.09	0.11
Null	326.10	5.90	0.02	0.00
DenDep	327.66	7.47	0.01	0.01
Oyst	328.22	8.02	0.01	0.00
Oyst + DenDep	329.81	9.61	0.00	0.01

850

Table 2. Coefficients of the best two AIC_c ranked models for OB and UEN from Table 1. w_i is Akaike weight.

Subsite:Model	Coefficient	Standard Error	t	p<0.05
Subsite OB				
Model 1 (w_i = 0.65)				
Constant	3.530	0.185	19.099	*
Oyst	-0.240	0.063	-3.821	*
ENSO	0.261	0.035	7.563	*
Model 2 (w_i = 0.32)				
Constant	3.269	0.366	8.928	*
Oyst	-0.229	0.066	-3.447	*
ENSO	0.251	0.036	6.911	*
Density-dependence	0.001	0.001	0.914	
Subsite UEN				
Model 1 (w_i = 0.41)				
Constant	4.720	0.117	40.292	*
Oyst	-0.105	0.040	-2.631	*
ENSO	0.119	0.022	5.436	*
Model 2 (w_i = 0.20)				
Constant	-140.463	36.041	-3.897	*
Year	0.073	0.018	4.038	*


Schooner Bay
Home Bay
Creamery Bay
Barries Bay
UEF
OB
UEN
A
A1
DBS
DEM
L
Estero de Limantour
Survey Location
Sandbar*
Seal Haul-out area
Aquaculture lease
Oyster Rack
Oyster Bag Area**
*as of August 2005
**3/16/2007 through 7/16/2007
UEF Upper Estero Far
OB Oyster Bar
UEN Upper Estero Near
A Main Haul-out
A1 Next to Main Haul-out
DBS Sandbar Attached to Land
DEM Drakes Mouth Sandbars
L Limantour Spit
0
1
2
Kilometers
N
W
E
S
Tomales Bay
Tomales Point
San Francisco
Point Reyes National Seashore
Drakes Estero
Bolinas Lagoon
Double Point
Duxbury Reef

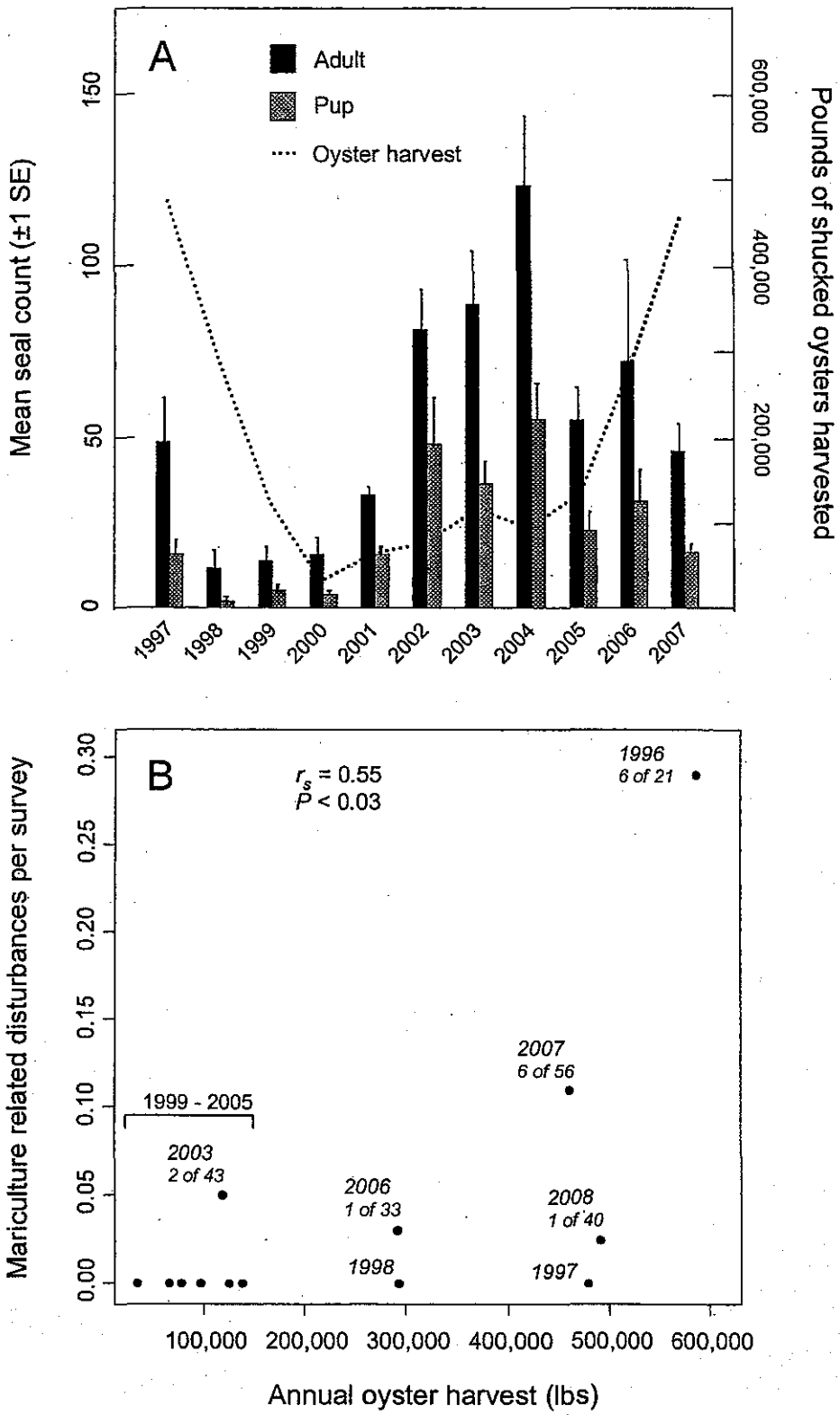
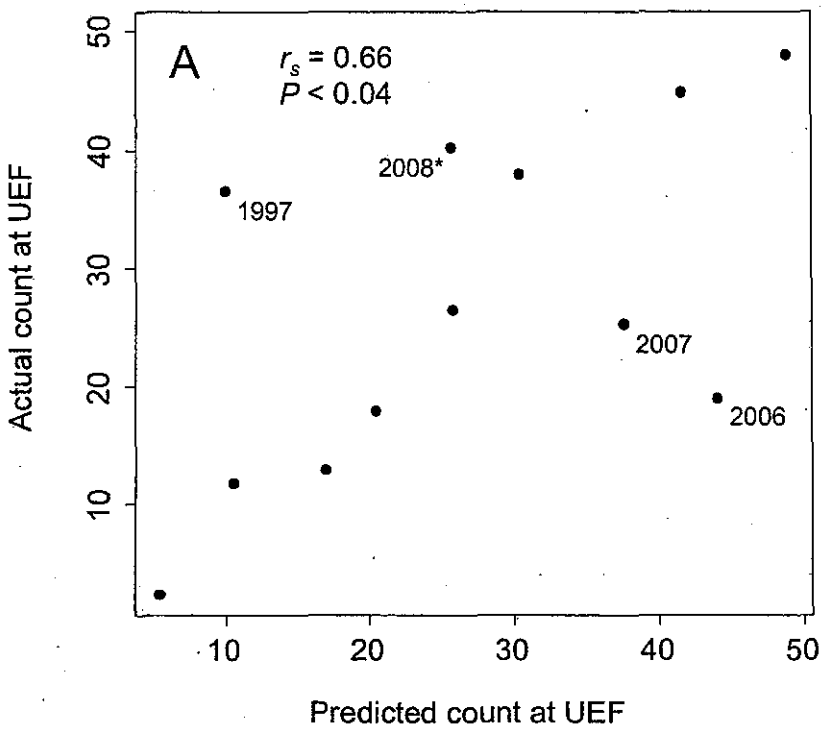

A
Adult
Pup
Oyster harvest
Mean seal count (±1 SE)
Pounds of shucked oysters harvested
0
50
100
150
200,000
400,000
600,000
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
B
r_s = 0.55
P < 0.03
1996
6 of 21
2007
6 of 56
1999 - 2005
2003
2 of 43
2006
1 of 33
2008
1 of 40
1998
1997
Mariculture related disturbances per survey
0.00
0.05
0.10
0.15
0.20
0.25
0.30
100,000
200,000
300,000
400,000
500,000
600,000
Annual oyster harvest (lbs)

Fig. 2


A
r_s = 0.66
P < 0.04
1997
2008*
2007
2006
Actual count at UEF
Predicted count at UEF
10
20
30
40
50

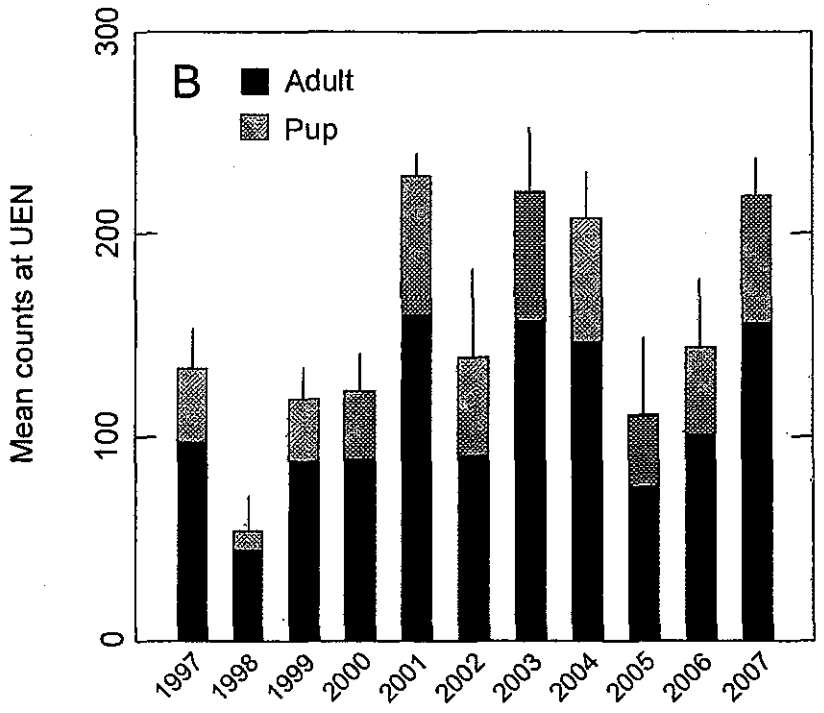

B
Adult
Pup
Mean counts at UEN
0
100
200
300
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007

Fig. 3

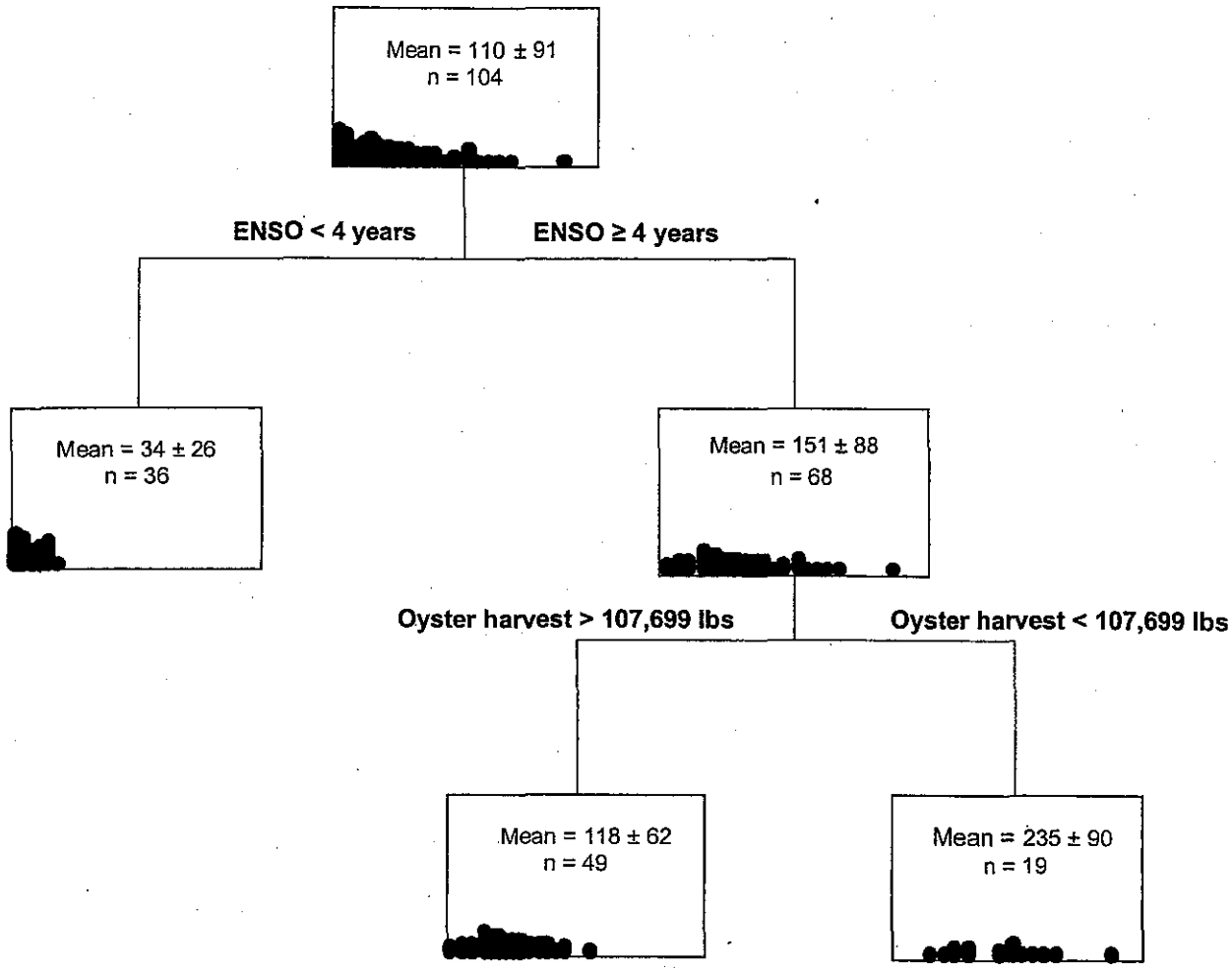

Mean = 110 ± 91
n = 104
ENSO < 4 years
ENSO ≥ 4 years
Mean = 34 ± 26
n = 36
Mean = 151 ± 88
n = 68
Oyster harvest > 107,699 lbs
Oyster harvest < 107,699 lbs
Mean = 118 ± 62
n = 49
Mean = 235 ± 90
n = 19

Fig. 4

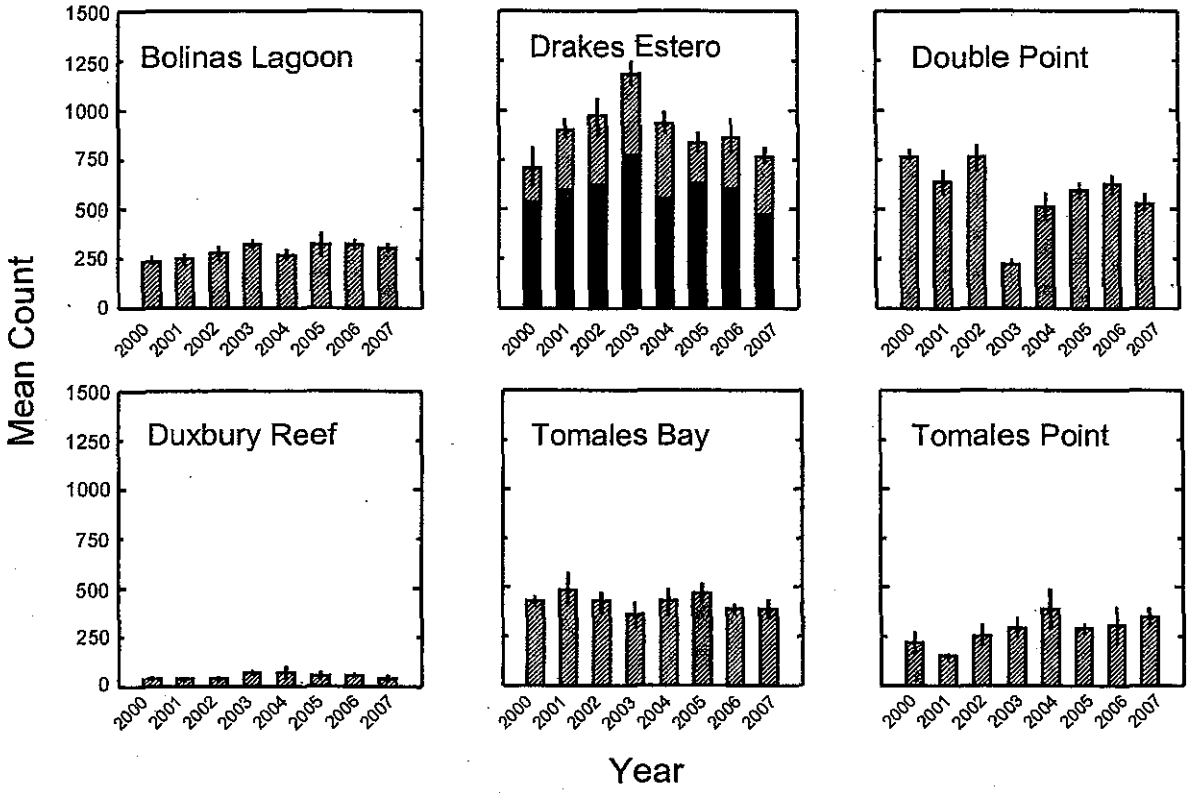

Mean Count
Year
Bolinas Lagoon
Drakes Estero
Double Point
Duxbury Reef
Tomales Bay
Tomales Point
0
250
500
750
1000
1250
1500
2000
2001
2002
2003
2004
2005
2006
2007

Fig. 5

L1425
02-106

November 4, 2008

Kevin and Nancy Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake Boulevard
Inverness, CA 94937

Dear Kevin and Nancy:

We received your correspondence regarding the paper: Modeling the Effects of El Nino, Density-Dependence, and Disturbance on Harbor Seal (Phoca Vitulna) Counts in Drakes Estero." We appreciate your concerns and want to assure you that this scientific paper has received administrative National Park Service review, additional outside peer review, and anonymous peer review conducted by the Journal of Marine Mammal Science. With this full internal and independent external peer review, the paper meets the standards set in National Park Service policies and applicable laws. According to the *Interim Guidance Document Governing Code of Conduct, Peer Review, and Information Quality Correction for National Park Service Cultural and Natural Resource Disciplines (2008)*:, "Other information that does not require peer review under this guidance includes: B. Information published either in a peer-reviewed journal listed on the Thomson Scientific Master Journal List or in an official report of the National Academies of Science." Based on this statement, the NPS has clearly conducted more than is required. Because the paper was presented at the National Academy Panel meeting, we have taken into consideration comments received during and after the meeting.

You questioned the timing of the release of the paper in the letter; the release was predicated on the peer review process being completed and changes made. For your information, the two databases (harbor seal and oyster harvest) used by the researchers had been and were publicly available.

Regarding your special use permit, we are fully committed to the full term until 2012. This paper does not affect your basic operations in Drakes Estero until 2012. As we stated in a previous letter, we want to work with you on issues in the future and are committed to doing so. We too wish the relationship were more productive and hope you agree that you and the park should work more cooperatively. However, as we have stated many times, the National Park Service is committed to meet the terms of your Reservation of Use and Special Use permit.

Sincerely,

Don L. Neubacher
Superintendent

DLNeubacher:an 11/04/08

"Kevin Lunny"
<kevin@drakesbayoyster.com>

10/22/2008 10:48 AM

To <mmsci@megalink.net>, <daryl_boness@umit.maine.edu>, <jon_jarvis@nps.gov>, <Don_Neubacher@nps.gov>, <Brian_O'Neill@nps.gov>, <Ben_Becker@nps.gov>,
cc "'Goodman, Corey'" <corey.goodman@pfizer.com>, "'John Hulls'" (b) (6) [redacted] >
bcc

Subject FW: 2007 Harbor Seal Report

History: This message has been forwarded.

Please review the attached letter and 2007 Annual Harbor Seal Report that were sent to Dr. Susan Roberts and the NAS Drakes Estero panel. If you have any questions, please feel free to contact me.

Thank you,

Kevin Lunny
Drakes Bay Oyster Company
415-669-1149

From: Kevin Lunny [mailto:kevin@drakesbayoyster.com]
Sent: Monday, October 20, 2008 4:47 PM
To: Susan Roberts (sroberts@nas.edu)
Cc: 'David M. Weiman'; 'Melissa Cichantek'
Subject:

Susan,

Please distribute this to the panel members.

Thank you,

Kevin lunny.08.0892.pdf Harbor_Seal_2007_Annual_Report2 (WITH PROPERTIES).pdf

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94956
(415) 669-1149
kevin@drakesbayoyster.com
nancy@drakesbayoyster.com

October 15, 2008

Dr. Susan Roberts
Executive Director
Ocean Studies Board
National Academy of Sciences
500 Fifth Street, NW
Washington, DC 20001

RE: **Undisclosed 2007 NPS Point Reyes Regional Harbor Seal Report**

Dear Dr. Roberts.

We just learned of a new NPS Report – the annual Point Reyes National Seashore/Golden Gate National Recreation Area Harbor Seal Report – a report that was not disclosed to your Board, not disclosed to us and that contradicts the Becker Report.

I am a third generation farmer and rancher on the Point Reyes Peninsula. I am a graduate of UC Davis with a degree in Animal Science. I was taught to respect science. What's unfolding here at Point Reyes National Seashore – and before your panel – is inconsistent with the scientific principles I was taught.

For the reasons described below, the National Park Service owes the Ocean Studies Board (OSB) an explanation.

In June, 2008, Point Reyes National Seashore staff completed work on two formal studies: "*Modeling the Effects of El Nino, Density-Dependence and Disturbance on Harbor Seal (Phoca Vitulina) Counts in Drakes Estero, California: 1997-2007*" (the Becker Report) and "*Pacific Harbor Seal (Phoca vitulina richardii) Monitoring at Point Reyes National Seashore and Golden Gate National Recreation Area: 2007 Annual Report*" (the 2007 PRNS Harbor Seal Report).

There are striking similarities to both Reports, including.

- Both involved harbor seals;

- Both involved harbor seals at Drakes Estero;
- Both involved the year 2007;
- Both studies were peer-reviewed; and,
- Both studies were authored or reviewed by some of the same Point Reyes National Seashore staff.

The Similarities End Here.

The Becker Report was submitted to the OSB panel on June 3, 2008 immediately after NPS was informed by Dr. Daryl Boness, Editor, Marine Mammal Science Journal that peer-review was completed and the Becker Report was approved for publication.

Three months later, on the eve of the September 4, 2008 OSB panel meeting in California, the agenda was modified to make the Becker Report the lead presentation.

Unlike the Becker Report, the 2007 Harbor Seal Report (dated June 2008) was NOT submitted to the OSB. As of September 4 (the day the OSB met in California) NPS had not submitted the 2007 Harbor Seal Report to the OSB Panel (Source: National Academy of Sciences, Public Records Office). As of September 23, three weeks after the panel first met, OSB updated the public documents file for this Board's work and the 2007 Harbor Seal Report was still not submitted.

The National Park Service did not submit their official 2007 Harbor Seal Report to your panel. We will. It is attached to this letter and we ask that you distribute it with this letter to the members of our panel and include it in your record.

The Irregularities Begin.

The 2007 PRNS Harbor Seal Report, according to Jon Jarvis, Regional Director National Park Service, was to be available by December 2007. In a June 13, 2007 letter to Dr. Goodman, Jarvis said the 2007 harbor seal documentation:

> *"...will be prepared as a final annual report by December 2007."*

The 2007 Harbor Seal Report focuses on the pupping season (March-June) and is typically released in December of the same year. NPS missed its self-imposed deadline of December 2007. The 2007 Harbor Seal Report is dated June 2008.

To prepare for the OSB's September meeting, Dr. Goodman sought to update harbor seal data, documentation and other information. Realizing that the 2007 Harbor Seal Report had neither

been posted nor sent to him, he filed a Freedom of Information Act (FOIA) request on July 31, 2008 to the Park Service seeking the 2007 report and related documents.

On August, 25, 2008, NPS sent Dr. Goodman a letter denying the FOIA request, declaring:

> *"the 2007 Harbor Seal Report is undergoing peer review and is, as a result, withheld..."*

There are two irregularities with this NPS rejection. First, NPS neglected to inform Dr. Goodman that the 2007 Seal Report was already dated June 2008, two months prior to his request. Second, the Park Service also did not tell Dr. Goodman that the 2007 Seal Report was already on the internet. Peer-review, it would appear, was completed when Dr. Goodman's request was denied. After peer-review and after uploading it to the web, NPS neither informed Dr. Goodman of its availability or nor sent it to him.

Perhaps more significantly, NPS made a decision not to submit this Report to the OSB.

The Trail of Irregularities Continues

From 2007, what is on the public record? What is known? And, does this now-published 2007 PRNS Harbor Seal Monitoring Report reflect that public record?

In early April 2007, in the middle of the 2007 harbor seal pupping season, the NPS told the Marin County Board of Supervisors that because of civil and criminal misconduct by DBOC against the federally-protected harbor seals, NPS was not proceeding with our pending permits.

On May 8, 2007, the Superintendent formally testified before the Marin County Board of Supervisors and declared the harm to harbor seals a "*national emergency.*" Said Neubacher:

> *...we believe because of recent actions, and I want to illustrate this, that the harbor seal pupping area in Drakes Estero is seriously threatened right now. Dr. Allen is going to discuss this, but we have some major problems because you can see on your map that pup [oyster] bags recently have been put in pupping areas. And Sarah will give you statistics, but it's amazing how many pups we have probably lost this year. So we've got a serious problem right now...*
>
> *I mean its that complex, because now you're talking about the Marine Mammal Commission, for example, wrote us a letter this morning, they're going to take it up. This is a national issue. They're going to take it up on a national level...*

Now, a year and a half later, the Becker Report was presented to the OSB. The Becker Report

was focused on modeling the relationship between oyster production at Drakes Estero and harbor seal populations. Becker and NPS colleagues concluded that as oyster production in Drakes Estero went up, harbor seals at subsite OB (one of eight in Drakes Estero) went down.

The 2007 Harbor Seal Monitoring Report defined its own objectives as follows:

> *The objectives of monitoring each site and the population as a whole are to i) detect changes in population size, ii) detect changes in reproductive success by way of pup production, and iii) identify anthropogenic or environmental factors that may affect the condition of the population. The monitoring objectives and protocol are described in detail in the draft San Francisco Bay Area Network Pinniped Monitoring Protocol, scheduled for completion in 2008.*

One would expect the concurrently published 2007 PRNS Harbor Seal Monitoring Report to detail the environmental harms caused by our oyster company, our boats, our workers and our presence. It did not.

The 2007 PRNS Harbor Seal Report referenced oyster production – in passing – and none of these references were consequential. None related to harm.

Put another way, the Becker Report and the 2007 PRNS Harbor Seal Monitoring Report are not consistent.

These two NPS studies – involving the same resource, harbor seals at Drakes Estero in the same time period, authored or reviewed by the same individuals at Point Reyes National Seashore – contradict one another. They are not consistent.

<u>More Irregulatities</u>.

Recently, we were informed that the 2007 PRNS Harbor Seal Monitoring Report was published on the internet.

We immediately Googled harbor seals Drakes Estero 2007. Nothing found.

Then we went to the U.S. Department of the Interior's web site, used their search feature and searched for "Harbor Seals, Drakes Estero, 2007." Nothing found.

We took another step. We went to the NPS web site and repeated the process. Nothing found.

Following that, we then went to the PRNS (PORE) web site and inserted the same. Nothing found.

Then we went to the NPS Inventory and Monitoring Program's web site. Nothing found.

Then we repeated the process using other names, reversing sequences and orders. Nothng found.

Yet, the NPS Inventory and Monitory Program's 2007 PRNS Harbor Seal Annual Report is on the web. It's on the internet. It is on a Park Service web site. (See: http://science.nature.nps.gov/im/units/sfan/vital_signs/pinnipeds/docs/Harbor_Seal_2007_Annual_Report2.pdf)

The web site, however, contained an instruction that prohibited the 2007 PRNS Harbor Seal Monitoring Report from being located and retrieved by Google, Yahoo or any other common search engine, including those of the Park Service or Interior Department.

It is hidden in plain sight.

It was withheld from Dr. Goodman. And, it was not provided to the OSB.

NPS Irregularities Violate NPS "Data Management Plan"

Several NPS units throughout the region developed a formal Data Management Plan (Version 2.0, September 2005) for what is called the San Francisco Bay Area Network, Inventory and Monitory Program. According to this plan:

> *The San Francisco Area Network (SFAN) Data Management Plan outlines how we intend to implement and maintain a system that will serve and data and information management needs of our Inventory and Management Program. This plan reflects our commitment to establishing and maintaining a robust system for data management and* ***to ensure the availability and usability*** *of high-quality natural resource information.* [highlight added]

According to the National Park Service Advisory Board, cited by the SFAN Plan, stated that the findings resulting from an I&M program, "*must be communicated to the public, for it is the broader public that will decide the fate of these resources.*" To that end, this NPS Data Management Plan is to "*provide data in a variety of formats and venues to reach all potential users*" and actually calls us "*information consumers.*"

The same NPS Plan provides a flow chart from "*data product*" to "*use*" in which the fifth of seven stations is labeled "*data discovery*" stating:

> *Allow for widespread, automated awareness of data products through websites and indexed clearinghouses.*

The next station is labeled "*distribution*" stating:

> *Share data products through internet download or direct mailing in response to specific requests.*

Another section of the Plan instructs NPS to make the data "*easily discoverable and obtainable.*"

These and other NPS requirements as set forth in their own regional plan were violated in numerous instances. Moreover, there is nothing in the NPS 2005 Data Management Plan that directed or recommended that the Park Service impose blocks on these reports. Nothing in this Plan says the NPS harbor seal reports, prepared as part of the Inventory and Monitoring Program may be hidden in blocked files.

The Two "Es" – Exclusions and Errors.

During the six weeks since the OSB met, the Becker Report was carefully reviewed. Based on letters and emails to NPS and the Journal of Marine Mammal Science, it can be concluded that the Becker Report, intended or not, is riddled with and based upon the Two "Es" – *Exclusions and Errors*. The Becker Report:

Exclusions

- excluded data and analysis from most of the study period's eleven years and limited their primary analysis to 2005-2007, coincidently, the precise time of the Lunny family's ownership of the oyster farm;
- excluded five of the eight subsites in Drakes Estero;
- excluded the overall harbor seal population in Drakes Estero;
- excluded the neighboring harbor seal populations of PRNS (PORE);
- excluded all non-oyster disturbances from the I&M Harbor Seal Data Base for 2005-2007;
- excluded all harbor seal disturbances from 1997-2004; and,
- excluded all but 2/10th of 1% of the recorded harbor seal disturbances (put another way, more than 99% of the total harbor seal disturbances were not included in the Becker Report)

Errors

- There is one over-arching error of significance. The oyster production (pounds of shucked oysters harvested) figure overstated DBOC production by 63% (267% when

compared to 2006).

In five communications since September 4 from Dr. Goodman and Mr. Hulls to the OSB, the Marine Mammal Science Journal and to the NPS, they separately detailed a lengthy list of other errors, omissions and misrepresentations.

What is striking about the 2007 PRNS Harbor Seal Report? It's similar to and consistent with the 2006 PRNS Harbor Seal Report. Both the 2006 and 2007 PRNS Harbor Seal Reports found no problems with the oyster farm.

Conclusions and Recommendations

Conclusions

(1) The National Park Service is engaging in deception with the Ocean Studies Board.

(2) On September 4 at the OSB meeting, Dr. Goodman already pointed out that the NPS Harbor Seal Database (1970's to the present) was not submitted to the OSB. Now, another key document, the most recent formal report on harbor seals at Point Reyes National Seashore (including Drakes Estero), was NOT submitted to the OSB.

(3) The 2007 PRNS Harbor Seal Report was placed on the web, and a manual instruction was inserted in the code to prevent the report from being searched and retrieved. It is only available if one knows its precise address (http://science.nature.nps.gov/im/units/sfan/vital_signs/pinnipeds/docs/Harbor_Seal_2007_Annual_Report2.pdf).

(4) Withholding and/or omitting this 2007 PRNS Harbor Seal Report prevents the Panel from a comparative review. It denies the panel the ability to see the obvious contradictions in Park Service reports.

What's emerged here is the "tale of two sciences." NPS/PRNS work done in the name of the I&M program appears to be professional and is consistent (see: 2006 and 2007 PRNS Annual Harbor Seal Reports). By contrast, science prepared and presented under the direction of the Superintendent ignores a lengthy list of laws and policies (see: the NPS Report, *"Drakes Estero, A Sheltered Wilderness Estuary, Versions"* I-V and now the Becker Report). These Reports are, it now appears, little more than a taxpayer-funded advocacy.

Recommendation for the Ocean Studies Board:

(1) Request that NPS formally submit the 2007 PRNS Harbor Seal Report to the OSB for inclusion in the OSB record and for consideration and evaluation by your panel.

(2) Request from NPS in writing, a full explanation as to why this 2007 PRNS Harbor Seal Report was denied Dr. Goodman in August when it was dated in June.

(3) Request from NPS a full and complete explanation for the contradictory conclusions between the 2007 PRNS Harbor Seal Report and the Becker Report.

(4) Require the NPS to explain why it insisted that Becker be the lead presentation before the OSB panel meeting on September 4, 2008.

(5) Require that all peer review comments -- from both the Becker Report AND the 2007 PRNS Harbor Seal Report – be submitted to the OSB by NPS, and placed in the OSB public files so these comments can be reviewed by all parties.

In light of these revelations, we remind the OSB panel that the Federal Policy on Research Misconduct is defined, in part:

> *Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.*

And, we request that, when preparing your report and recommendations, the OSB recommend that all NPS science reports be fully accessible and searchable, consistent with Federal law and consistent with their Regional SFAN Inventory and Monitoring Data Management Plan. The NPS practice of blocking search access to these NPS reports should be halted.

Additionally, DBOC requests that the OSB hold another public hearing. We request an opportunity to present a statement to your panel about the Drakes Estero Report, the Becker Report and the underlying science – and explain how these NPS actions have interfered with our oyster farm. The numerous revelations and new information, available only after September 4 require it.

DBOC has written Dr. Goodman and Mr. Hulls. We have asked that they prepare a comparative analysis and submit it to you and to the Journal of Marine Mammal Science.

We close this letter with two thoughts. First, the Park Service tells farmers and ranchers at Point Reyes that they lack sufficient funds to repair fences, allowing a large elk herd to compete with cattle for grass during a severe drought. Yet, they spend tax payer dollars to fund incorrect and misleading studies, like the Becker Report and the five versions of the Drakes Estero Report, as well as underwrite this panel – and then attempt to shape and manipulate its work. Second, at DBOC we have tried to apply the lessons of science to improving our farm and our farming practices. We have pioneered methods of setting seed to all but eliminate the threat of invasives and we are exploring opportunities to reinstate native oysters in Drakes Estero.

We respectfully ask that your panel help us, our community, and the National Park Service wade through this situation in order to establish a sound, factual baseline upon which you could build the second, wider study. We fear that allowing this pattern of falsehoods and misrepresentations to go unacknowledged and uncorrected would send a chilling message.

There is so much good science that could be done with mariculture and the environment and we hope that we will be able to work with the panel on the second, and far more ecologically and scientifically significant part of your charter; to establish the best practices for coastal mariculture.

We also ask that this letter, and the accompanying report be circulated to your Panel members and be included in your Public Records database.

Sincerely,

Kevin Lunny

Nancy Lunny

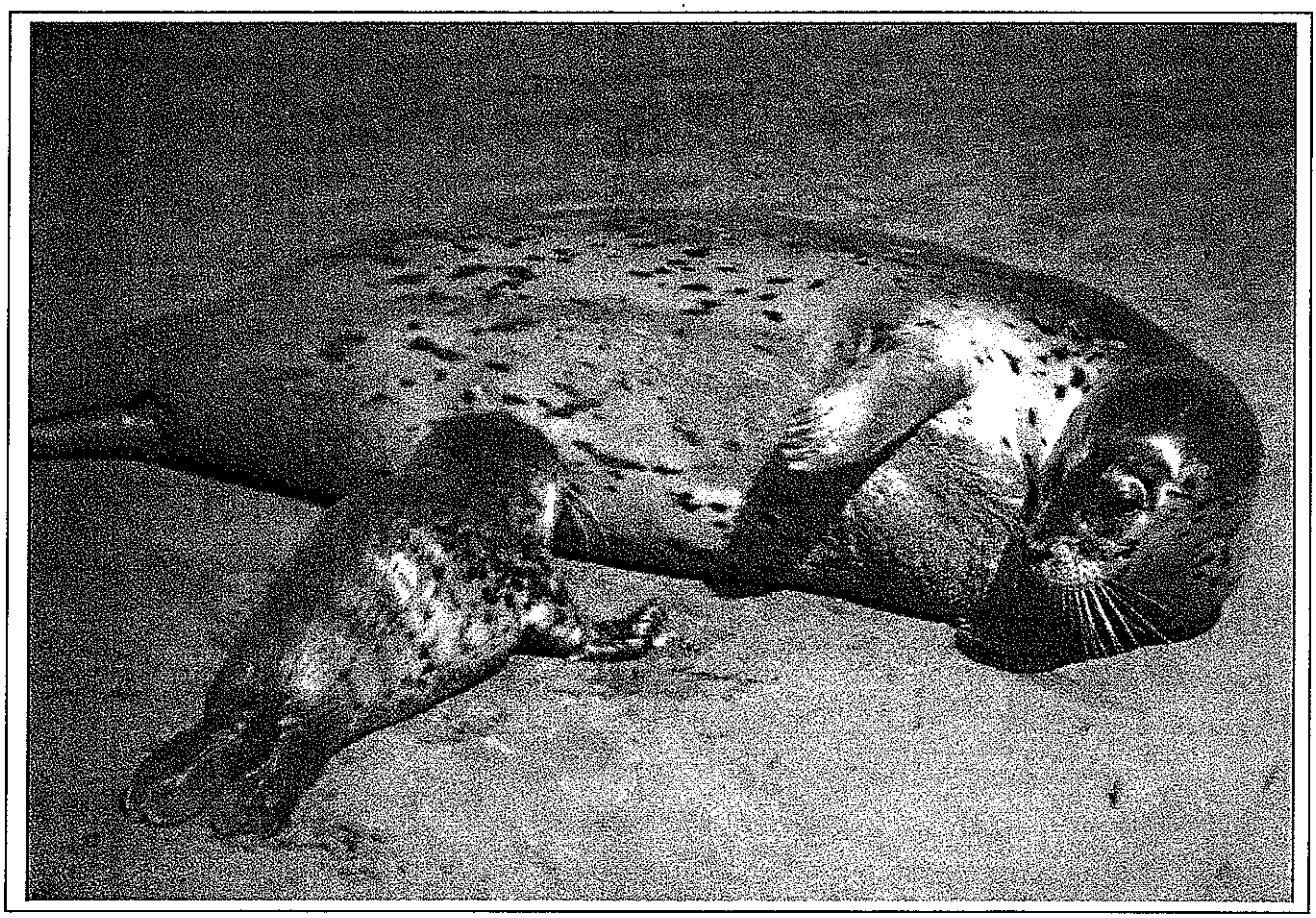
Enc: Pacific Harbor Seal (*Phoca vitulina richardii)* Monitoring at Point Reyes National Seashore and Golden Gate National Recreation Area: 2007 Annual Report, National Park Service, US Department of the Interior; National Resources Program Center, Natural Resource Technical Report NPS/SFAN/NRTR – 2008/118

National Park Service
U.S. Department of the Interior

Natural Resource Program Center

Pacific Harbor Seal (*Phoca vitulina richardii*) Monitoring at Point Reyes National Seashore and Golden Gate National Recreation Area: 2007 Annual Report

Natural Resource Technical Report NPS/SFAN/NRTR—2008/118



cc: Dr. Daryl Boness, Editor, Journal of Marine Mammal Science
Jon Jarvis, Regional Director, National Park Service
Don Neubacher, Superintendent National Park Service
Brian O'Neill, Superintendent, Golden Gate National Recreation Area
Dr. Ben Becker, Pacific Coast Science and Learning Center, Point Reyes National Seashore
David Press, Inventory and Monitoring Program, Point Reyes National Seashore
Dr. Sarah Allen, Lead Scientist, Point Reyes National Seashore
Kristen Truchinski, Point Reyes National Seashore
Dale Roberts, Point Reyes National Seashore
Erin Flynn, Point Reyes National Seashore
Dr. John Dennis, Deputy Chief Scientist, National Park Service
Dr. Corey Goodman
John Hulls

ON THE COVER
A Pacific harbor seal (*Phoca vitulina richardii*) nurses her pup in Point Reyes National Seashore
Photograph by: Judy Bourke

Pacific Harbor Seal (*Phoca vitulina richardii*) Monitoring at Point Reyes National Seashore and Golden Gate National Recreation Area: 2007 Annual Report

Natural Resource Technical Report NPS/SFAN/NRTR—2008/118

Kristen Truchinski, Erin Flynn, David Press, Dale Roberts, and Sarah Allen
Harbor Seal Inventory & Monitoring Program
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, CA 94956

June 2008

U.S. Department of the Interior
National Park Service
Natural Resource Program Center
Fort Collins, Colorado

The Natural Resource Publication series addresses natural resource topics that are of interest and applicability to a broad readership in the National Park Service and to others in the management of natural resources, including the scientific community, the public, and the NPS conservation and environmental constituencies. Manuscripts are peer-reviewed to ensure that the information is scientifically credible, technically accurate, appropriately written for the intended audience, and is designed and published in a professional manner.

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Views, statements, findings, conclusions, recommendations and data in this report are solely those of the author(s) and do not necessarily reflect views and policies of the U.S. Department of the Interior, NPS. Mention of trade names or commercial products does not constitute endorsement or recommendation for use by the National Park Service.

Printed copies of reports in these series may be produced in a limited quantity and they are only available as long as the supply lasts. This report is also available from the San Francisco Inventory and Monitoring website (http://science.nature.nps.gov/im/units/sfan) or by sending a request to the address on the back cover.

Please cite this publication as:

Truchinski K., E. Flynn, D. Press, D. Roberts, and S. Allen. 2008. Pacific harbor seal (*Phoca vitulina richardii)* monitoring at Point Reyes National Seashore and Golden Gate National Recreation Area: 2007 annual report. Natural Resource Technical Report NPS/SFAN/NRTR—2008/118. National Park Service, Fort Collins, Colorado.

NPS D-553, June 2008

Contents

Page

Contents iii

Figures v

Tables vii

Abstract ix

Acknowledgements xi

Introduction 1

Background 1

Objectives 1

Methods 3

Study Area 3

Surveys 5

Data Management and Analysis 6

Results 9

Overall 9

Summary by Site 15

Conclusion 21

Literature Cited 23

Figures

Page

Figure 1. Regional survey sites in San Francisco Bay and Sonoma, Marin, and San Mateo counties, California. 4

Figure 2. Maximum counts of harbor seal adults and immatures during the breeding season (March-May) at Marin County locations. 10

Figure 3. Maximum harbor seal pup counts for 2000-07 at Marin County locations. 11

Figure 4. Maximum harbor seal pup counts *(Phoca vitulina richardii)* at the dominant Marin County pupping locations, 2000-2007. 12

Figure 5. Maximum harbor seal counts during the molt season (June-July) for 2000-07 at Marin County locations. 13

Figure 6. Rates of disturbances per hour at Marin County locations from March through July 2007 15

Figure 7. Rates of disturbances per hour at Marin County locations from March through July of 2004-2007. 16

Tables

Page

Table 1. Summary data of harbor seal colonies for the 2007 season..... 9

Table 2. Date of first pup observed in the season by location, 2000-07..... 11

Table 3. Identified sources of disturbances for Marin County locations, from March 1st to July 31st, 2007..... 14

Table 4. Regional surveys of harbor seal numbers in central California, March 1st through July 31st, 2007..... 19

Abstract

Pacific harbor seals (*Phoca vitulina richardii*) are the dominant and only year-round resident pinniped in the San Francisco Bay Area, California. Long-term monitoring studies have been conducted at the largest harbor seal colonies in Point Reyes National Seashore and Golden Gate National Recreation Area since 1976. The objectives of monitoring each site and the population as a whole are to i) detect changes in population size, ii) detect changes in reproductive success by way of pup production, and iii) identify anthropogenic or environmental factors that may affect the condition of the population.

Harbor seal surveys were conducted throughout the 2007 breeding (March through May) and molting (June through July) seasons once to twice per week at the largest Point Reyes and Golden Gate harbor seal colonies, collectively referred to as Marin County locations. Members of the Harbor Seal Monitoring Volunteer Program completed 252 surveys at eight Marin County locations, contributing an estimated 2152 hours. During the breeding season, a maximum combined total of 2771 adults and immature seals and 903 seal pups were counted at all Marin County monitoring locations. Drakes Estero had the most adults (759), followed by Tomales Bay (481) and Double Point (469). Drakes Estero and Double Point accounted for 54% (488) of pups at Marin County haul outs. From June to July, 4218 animals molted at Marin locations. Disturbances to seals occurred, with 215 incidences recorded during surveys. The most frequent causes were human (35.3%), unknown (20.9%), and motor boat (14.4%). Regional surveys occurred 13 times throughout the season at locations in Sonoma, Marin, San Francisco, and San Mateo counties. Marin County locations accounted for 73.2% (2916/3979) of breeding adults and immatures, 84.4% (765/974) of pups, and 74.1% (3459/4787) of seals during the molting season.

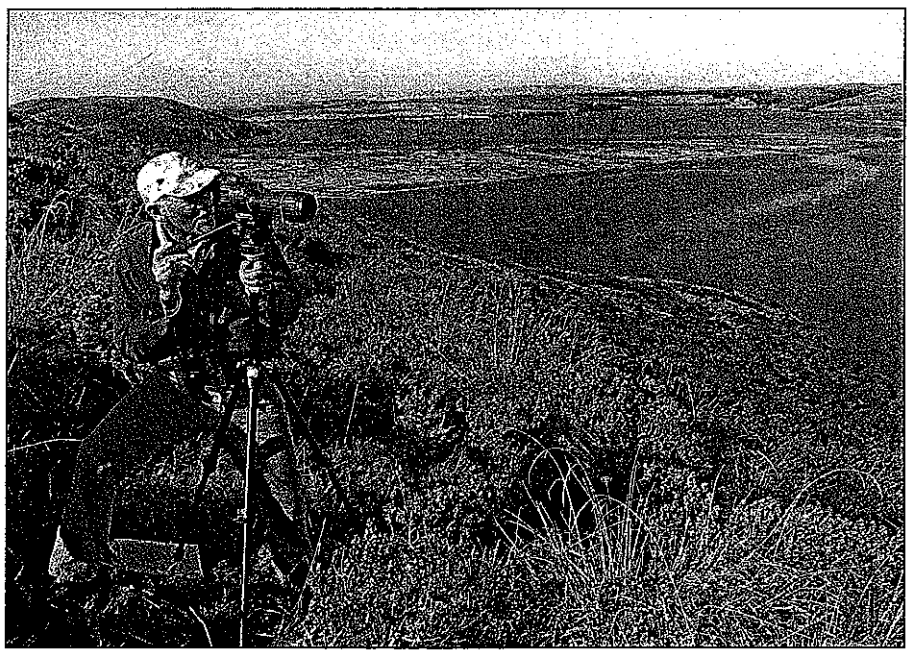
Acknowledgements

We thank all the volunteers who hiked many miles through fog, rain, and wind to survey harbor seals, including J. Adams, J. Bourke, T. Bushore, R. Bograd, R. Catlin, K. Carolan, M. Conrad, L. Davidson, R. Ferris, J. Fitzpatrick, J. Ford, W. Holter, R. Kane, M. Koenen, P. King, K. Kirk, J. Lamphier, J. Lasnier, D. Leite, E. Leite, D. Lingelser, P. Lord, E. Moore, J. Mohr, P. Moschetti, S. Pender, T. Pete, R. Schweig, B. Siegel, E. Sojourner, S. Van Der Wal, M. Vanvelkenburg, E. Vermeulen, S. Waber, E. Wheeler, A. Whelan, D. Zierten, and S. Zurek.

We also thank the regional group of volunteers associated with various collaborative groups, including N. Bell, J. Bray, S. Bush, S. Durkin, M. Engelbrecht, M. Follis, D. Green, D. Greig, C. Hellwig, B. Jayne, S. Lenz, C. Miller, J. Mohr, J. Mortenson, B. Platos, L. Wheeler, B. Wilson and other agencies and organizations including the Farallones Marine Sanctuary Association, Gulf of the Farallones National Marine Sanctuary, The Stewards of the Coast and Redwoods, The Fitzgerald Marine Reserve, and The Marine Mammal Center for contributing numbers to the region-wide surveys.

Finally, we are grateful for the generous contributions from the Point Reyes National Seashore Association, the David and Vicki Cox Family Foundation, the San Francisco Bay Area Inventory and Monitoring Program, and the Marin Conservation Corps/AmeriCorps Program.

The following peer reviewers greatly improved this document: Bill Merkle (GOGA Wildlife Biologist), Ben Becker (Director, NPS Pacific Coast Science and Learning Center), Dave Graber (Chief Scientist, NPS Pacific West Region), and Denise Greig (Marine Biologist, The Marine Mammal Center).



Volunteer Dick Lingelser counting seals at Drakes Estero (photo courtesy of Judy Bourke).

Introduction

The information presented in this report is a summary of the harbor seal data collected at Point Reyes National Seashore and Golden Gate National Recreation Area during the 2007 breeding and molting seasons, March-July. Summary data collected as part of a region-wide survey effort, including adjacent areas (San Francisco Bay, San Mateo County and Sonoma County) where NPS surveys were conducted in conjunction with other agencies and organizations for 2007, are also presented. This report is not intended to analyze long-term trends in the harbor seal data set, which are more appropriately investigated at five year intervals (i.e. Allen et al. 2004). Furthermore, this document is not intended to report on or analyze data specific to NPS management issues related to harbor seals.

Background

Pacific harbor seals (*Phoca vitulina richardii*) are the dominant and only year-round resident pinniped in the San Francisco Bay Area, California. The population at Point Reyes National Seashore represents the largest concentration of harbor seals in the State of California, and accounts for approximately 20% of the mainland molting population (Lowry et al. 2005). Much of the Point Reyes coastal zone remains relatively pristine and provides good marine and terrestrial habitat for seals to rest, molt, feed, and breed where human encroachment is minimal. The inaccessibility of much of the area has historically afforded some protection from human disruption during the seals' terrestrial resting periods; however, some pinniped populations in California are still recovering from a long period of exploitation that did not end until the passage of the Marine Mammal Protection Act in 1972 (Carretta et al. 2005). Human disturbance of seals at colonies is of interest to the National Park Service (NPS) because nearly 2.4 million visitors visit Point Reyes annually (Statistical Report, PRNS, 2007) and several million more visit the Golden Gate National Recreation Area, many of whom visit the tidepools, beaches and estuaries of the parks. The parks may implement management actions to reduce disturbance to seals at colonies, if appropriate.

Objectives

Long-term monitoring studies of harbor seals have been conducted at the largest colonies in Point Reyes National Seashore and Golden Gate National Recreation Area since 1976 (Allen and Huber 1984, Allen et al. 1989; Sydeman and Allen 1999; Allen et al. 2004). The objectives of monitoring each site and the population as a whole are to i) detect changes in population size, ii) detect changes in reproductive success by way of pup production, and iii) identify anthropogenic or environmental factors that may affect the condition of the population. The monitoring objectives and protocol are described in detail in the draft *San Francisco Bay Area Network Pinniped Monitoring Protocol*, scheduled for completion in 2008.

Methods

Study Area

The study area extends from Tomales Point south to San Francisco Bay. The Point Reyes peninsula extends from the mouth of Tomales Bay (Lat. 38° 30'N) south to Bolinas Lagoon (Lat. 37° 30'N). Point Bonita is located in the Marin Headlands, at the mouth of San Francisco Bay in the Golden Gate National Recreation Area. For this paper, the Point Reyes sites and Point Bonita are collectively referred to as Marin County locations. Point Reyes National Seashore, Golden Gate National Recreation Area, Gulf of the Farallones National Marine Sanctuary, the California State Parks, and the county parks share jurisdiction over segments of this coastline (Figure 1).

The topographic diversity of this coastal zone provides a broad range of substrates for harbor seals to come ashore. These include tidal mud flats, offshore and onshore rocky tidal ledges, and sandy beaches. A "haul out site" is defined as a terrestrial location where seals aggregate for periods of rest, birthing, and nursing of young (Harvey 1987, Thompson 1987). Each site, or location, is comprised of several "subsites", or distinct areas of beach, rock outcrops, or sandbars where harbor seals haul out. Coastal embayment sites include Tomales Bay, Drakes Estero, Bolinas Lagoon, and San Francisco Bay. Coastal sites surveyed include Tomales Point, Point Reyes Headlands, Duxbury Reef, Double Point, and Point Bonita (Figure 1).

The sample design and methods for this program were developed so that the data could be integrated with other regional surveys, allowing for the results to be interpreted in a regional context. Annually, the National Park Service participates in regional harbor seal breeding season surveys sponsored by NOAA, with the Point Reyes National Seashore Science Advisor as the coordinator for the central coast breeding season survey.

Regional survey sites include colonies in San Francisco Bay (Alcatraz, Mowry Slough, Castro Rocks, Yerba Buena Island, and Newark Slough), Sonoma County (Sea Ranch, South Sonoma sites, Fort Ross, and Jenner) and San Mateo County (Fitzgerald Marine Reserve, Pescadero, Pebble Beach, Point San Pedro, Bean Hollow, and Cowell Ranch Beach (Figure 1)).

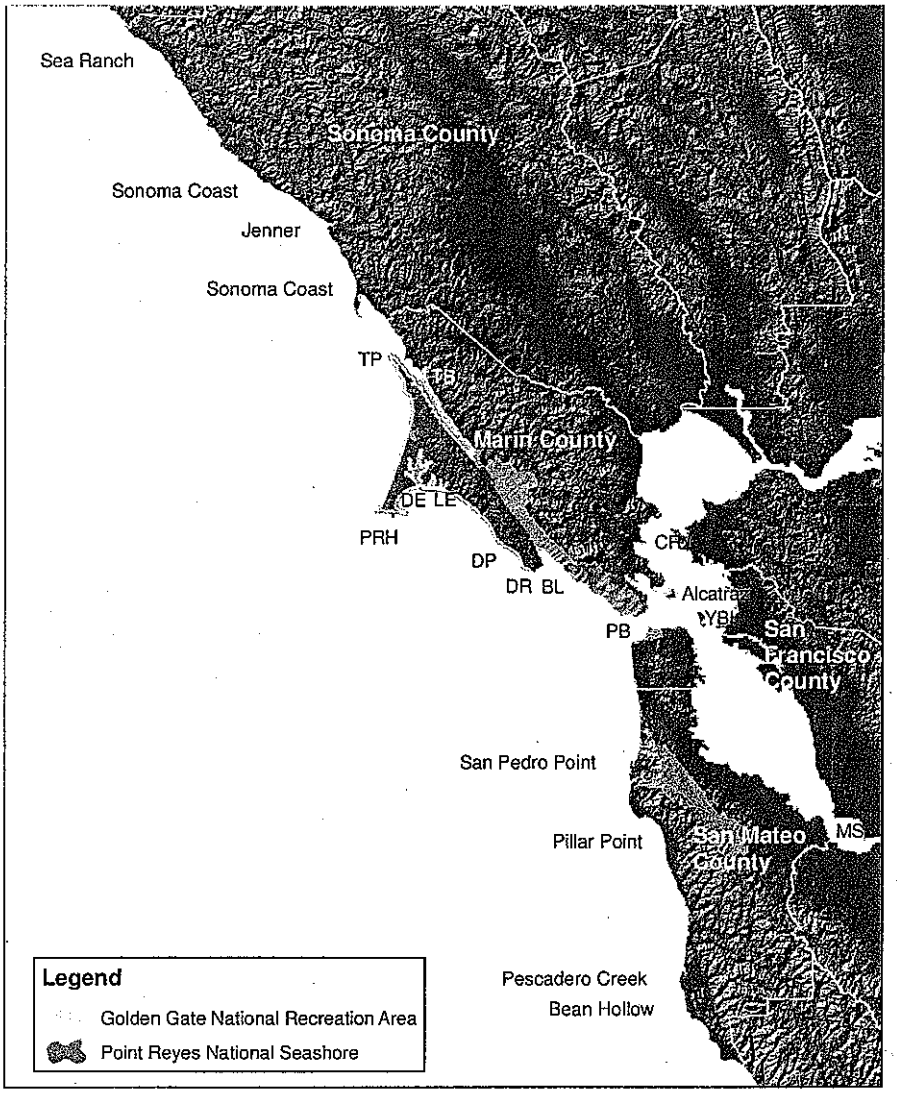


Figure 1. Regional survey sites in San Francisco Bay and Sonoma, Marin, and San Mateo counties, California. Map does not present all of the regional survey locations included in Sonoma and San Mateo counties. TB=Tomales Bay, TP=Tomales Point, DE=Drakes Estero, PRH=Point Reyes Headland, LE=Limantour Estero, DP=Double Point, DR=Duxbury Reef, BL=Bolinas lagoon, PB=Point Bonita, CR=Castro Rocks, YBI=Yerba Buena Island, MS=Mowry Slough.

Surveys

Volunteer observers were trained to monitor harbor seals at designated sites within Point Reyes and at Point Bonita during two classroom and three field sessions in March 2007. The majority of the volunteers had been previously trained and returned to the 2007 season with many years of experience. New volunteers were required to be mentored by returning volunteers at a site before they conducted a survey alone.

Harbor seal surveys were conducted throughout the breeding (March 1st through May 31st) and molting (June 1st through July 31st) seasons once to twice per week at each Marin County location. Surveys were conducted at medium to low tides (below 3ft) during the day. Surveys were not conducted in heavy fog because of poor visibility and they were not conducted in the rain because harbor seals haul out in lower numbers in the rain (Jemison and Pendelton 2001).

Volunteers surveyed for 2 hours from fixed observation points with all subsites counted approximately every 30 minutes for a total of 4 counts each survey. Subsites were counted and recorded separately on pre-formatted datasheets and then added for site totals every half hour. Three locations often had only two counts each survey due to hiking/traveling time between subsites: Tomales Point, Bolinas Lagoon, and Duxbury Reef.

For each subsite the observer recorded the time, number of adult and immature seals, pups, dead pups, red-pelaged seals, and fresh shark-bitten seals. Red pelage is easily identified and results from the deposition of iron oxide precipitates on the hair shaft; it usually extends from the head down to the shoulder and is of interest due to its rarity outside of the San Francisco Bay Area. (Allen et al. 1993). During the molting season (June-August) all animals were counted as adults and immature seals because of the difficulty in distinguishing large pups from immature seals.

Disturbances and potential disturbances were recorded as they occurred on a data form separate from seal numbers. Disturbances included any events that caused the seals to lift their head (head alert), flush, or flush into water, while potential disturbances were defined as any anthropogenic event within a defined haul out zone that had the potential to flush seals. Observers recorded the time, source, and effect of each disturbance. The information on the effect included the reaction of the seals, the numbers of seals that reacted, and when and where they re-hauled if they were flushed into the water. In some cases the disturbance was not directly observed, but surveyors recorded the number of animals affected with an "unknown" disturbance. Disturbances were recorded by fixed categories to assist with summary analyses. The categories were:

Source	Example
Motor-boat	Motorboat, Jet ski
Non Motor-boat	Canoe, Kayak, Sailboat, Wind surfer
Vehicle	Car, Bus, Motorcycle
Dog	Dog, Dog barking
Aircraft	Airplane, Helicopter, Hang glider, Ultralight
Human	Clammer, Researcher, Oyster Worker, Hiker, Horse rider
Bird	Turkey Vulture, Gull, Raven
Other	Coyote, Other Pinniped, Rock Slide, etc.

On alternating weekends, regional surveys were conducted at all sites included in regional counts (see Figure 1). Participants in the region-wide surveys included various organizations and volunteers. Regional counts could be conducted at anytime between Thursday and Monday over the selected regional survey weekends.

All count and disturbance datasheets completed during harbor seal surveys were entered into a relational Microsoft Access database during the course of the field season. At the end of the season, the database records were error-checked against the paper datasheets for accuracy. The records were further reviewed to ensure that only accurate and complete count data were used for analysis (see draft pinniped protocol for more details). For example, incomplete counts or counts that may have been hampered by poor weather conditions were noted in the database as poor quality surveys.

Data Management and Analysis

Although harbor seal data were collected according to subsites at each monitoring location, subsite data are not reported or analyzed within this report. By summing the subsite counts for each survey time interval, the maximum site total was identified for each survey and used for data summaries and analyses. The maximum total site count for each survey was then split into the adult/immature and pup age categories during the breeding months of March, April, and May.

The maximum number of seals counted at a site over the course of the entire season is often used for comparisons between years and sites. Because there is little to no movement of harbor seals between sites during the pupping and molting seasons, it was assumed that individual animals were not counted at more than one site (Harvey and Goley 2005). The maximum total count for each year within the study area was determined by taking the sum of the maximum count at each location. The maximum total count was determined separately for the breeding and molting seasons. Maximum counts at each location may have occurred on separate days (see Barlow et al. 2002). When compiling count summaries from the harbor seal data, only records noted as high quality counts were included. During the regional survey weekends, it was not uncommon for a site to be surveyed more than once. In these cases, the survey with the greater seal count was used for any regional summaries.

The total maximum count of breeding season adults/immatures, pups, and molting harbor seals were averaged separately across survey years 2000 to 2007 and compared to the 2007 data. Inclusion of all survey years in the average calculation accounts for the inherent inter-annual variability in the harbor seal population and reproductive output. Declines below one standard deviation from the mean, especially over the course of a few years, may merit further analysis of the data for statistical significance, additional research, or management actions.

When looking at disturbance events, only actual disturbances, those that elicited a head-alert or flush reaction from the seals, were used for analysis. Disturbance tallies were based on disturbance sources rather than the number of subsites or seals affected. Disturbance rates were calculated as the number of disturbance events that occurred during the time period from the first observation to the end of the final observation period. Because the disturbance data were not analyzed for effects on the seal count data in this report, all actual disturbance data were used for

analysis regardless of the quality of the associated seal count data. Potential disturbances (events that could potentially elicit a reaction from seals) were recorded by volunteers to quantify any given type of disturbance recurring at a particular site, but this information is not analyzed in this report. These data may be used to understand potential emerging disturbance issues at each location.

Please note that data quality standards and analysis procedures enacted in 2007 in preparation for this report have been applied to all data within the current monitoring database, which extends back to 2000. For this reason, summary data reported here for 2000 to 2006 may differ from data summaries published in previous harbor seal reports.

Results

Overall

In 2007, 36 volunteers completed 252 surveys at Marin County locations between March 1st and July 31st, completing an estimated 2152 hours. Each location was surveyed between 15 and 50 times, which includes 13 regional surveys. During the breeding season (March-May), a maximum of 2771 adults and 903 pups were observed in Marin locations, with the numbers growing to 4218 individuals during the molting season (June-July) (Table 1).

Table 1. Summary data of harbor seal colonies for the 2007 season. All reported numbers reflect the maximum number seen during a single census.

Location	Max # adults in breeding season[1]	Max # Pups in breeding season	Max # seals in molting season[2]	# Surveys		Max # Reds[3]	Max # Shark Bites[3]	Max # Dead Pups[3]
Bolinas Lagoon	262	126	448	Weekday: Weekend:	30 8	12	3	1
Double Point	469	215	1190	Weekday: Weekend:	20 10	5	5	18
Drakes Estero	759	273	1005	Weekday: Weekend:	22 18	15	2	5
Duxbury Reef	81	7	56	Weekday: Weekend:	25 8	0	1	0
Point Reyes Headlands	119	46	312	Weekday: Weekend:	15 1	1	0	0
Tomales Bay	481	72	415	Weekday: Weekend:	11 12	14	1	2
Tomales Point	374	158	626	Weekday: Weekend:	13 9	7	3	2
Point Bonita	226	6	166	Weekday: Weekend:	41 9	5	2	0
TOTAL	**2771**	**903**	**4218**		**252**	**59**	**17**	**28**

1. Max # Breed = adults and immatures during the breeding season, March 1 to May 31.
2. Max # Molt = all age classes during the molting season, June 1 to July 31.
3. The Max # Red, Shark Bites, and Dead Pups are the maximum number observed March 1 to July 31.

Adult and Pup Counts During the Breeding Season

Adults: The maximum number of adults hauling out during the 2007 breeding season was 2771 for 2007 (Table 1). This fell below but within one standard deviation of the mean number observed from 2000-07 (2954.8 ± 353.7, Figure 2). Drakes Estero had the most adults (759), followed by Tomales Bay (481) and Double Point (469).

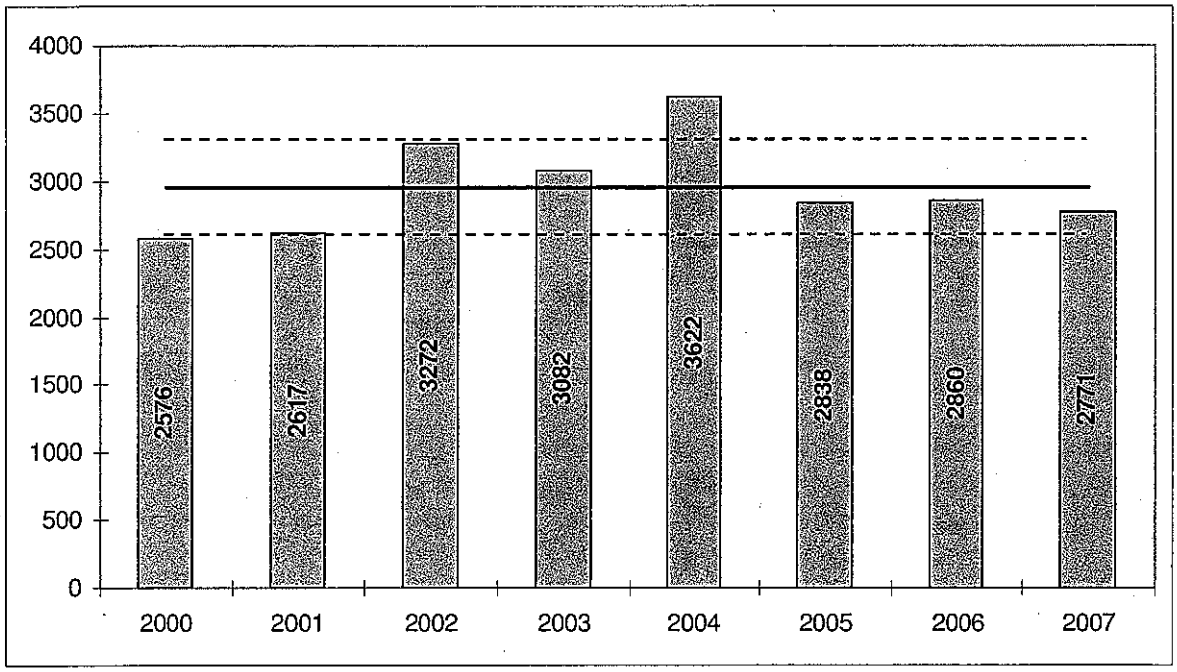


Figure 2. Maximum counts of harbor seal adults and immatures during the breeding season (March-May) at Marin County locations. The solid line on the graph represents the mean of the maximum adult counts from 2000-07 (2954.8), and the dashed lines represent one standard deviation from the mean (353.7).

Pups: The combined maximum pup count for all Marin County locations during the 2007 breeding season was 903 pups (Table 1). The 2007 maximum pup count was 21% lower than the mean maximum pup count from 2000-2007 (1154.5 ± 153.0). The maximum pup counts for 2006 and 2007 fell below one standard deviation from the mean maximum pup count from 2000-2007 (Figure 3). Since 2004 the maximum pup counts have decreased; however, further analyses are needed to determine if these decreases are statistically significant (Figure 3). Drakes Estero and Double Point accounted for 54% (488) of pups at Marin haul outs, which was consistent with the proportions of pups in the past.

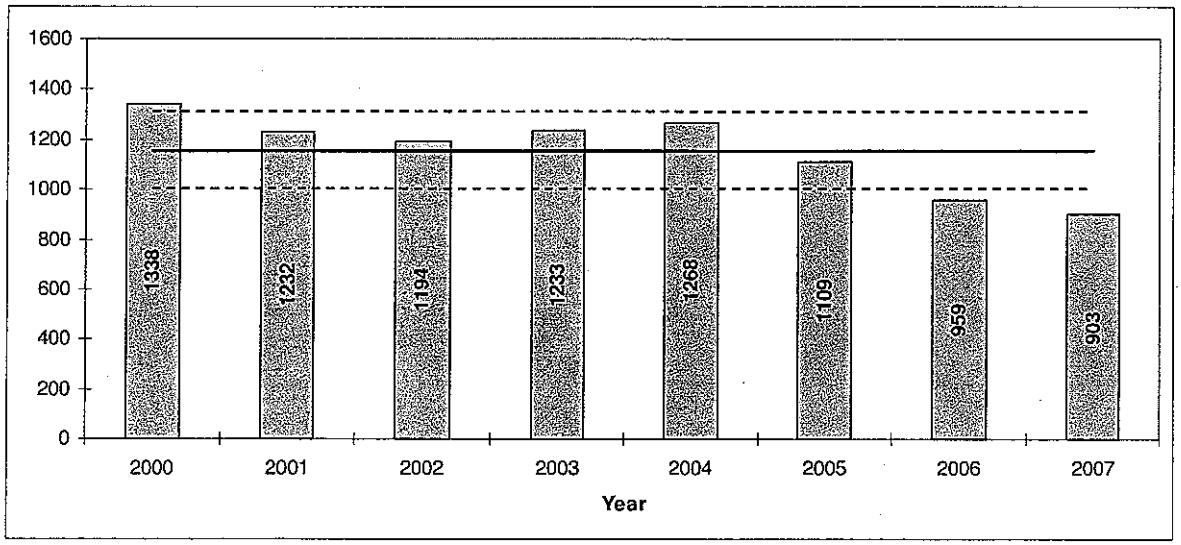


Figure 3. Maximum harbor seal pup counts for 2000-07 at Marin County locations. The solid line on the graph represents the mean of the maximum pup counts from 2000-07 (1154.5), and the dashed lines represent one standard deviation from the mean (153.0).

The first pup observed has been documented since 2000, and there was no apparent trend in the date or location of the first pup observed from 2000 to 2007 (Table 2). In 2007 three pups were observed at Tomales Bay on February 14th but were not seen after that date. It is suspected that these pups may have been premature. Because the pups were not observed closely and not confirmed, they were not included as the first date for the season. The first confirmed pup observed was at Double Point on March 2, 2007, within the normal birth date range.

Table 2. Date of first pup observed in the season by location, 2000-07.

Year	Date	Location
2000	March 14	Point Reyes Headlands
2001	March 16	Tomales Bay
2002	March 3	Drakes Estero
2003	March 27	Bolinas Lagoon
2004	March 20	Double Point
2005	March 6	Drakes Estero
2006	March 9	Double Point
2007	March 2	Double Point

Of the dominant pupping sites (Bolinas Lagoon, Double Point, Drakes Estero, Tomales Bay, and Tomales Point), only Tomales Point did not have a decline in pup numbers from 2006 to 2007 (Figure 4). Tomales Bay experienced the biggest difference (33%) in pup numbers from 2006 to 2007. However, in the past, seals have shifted annually between Tomales Bay and Tomales Point (Allen 2004), and the combined maximum pup counts for 2006 and 2007 were comparable (212 versus 230).

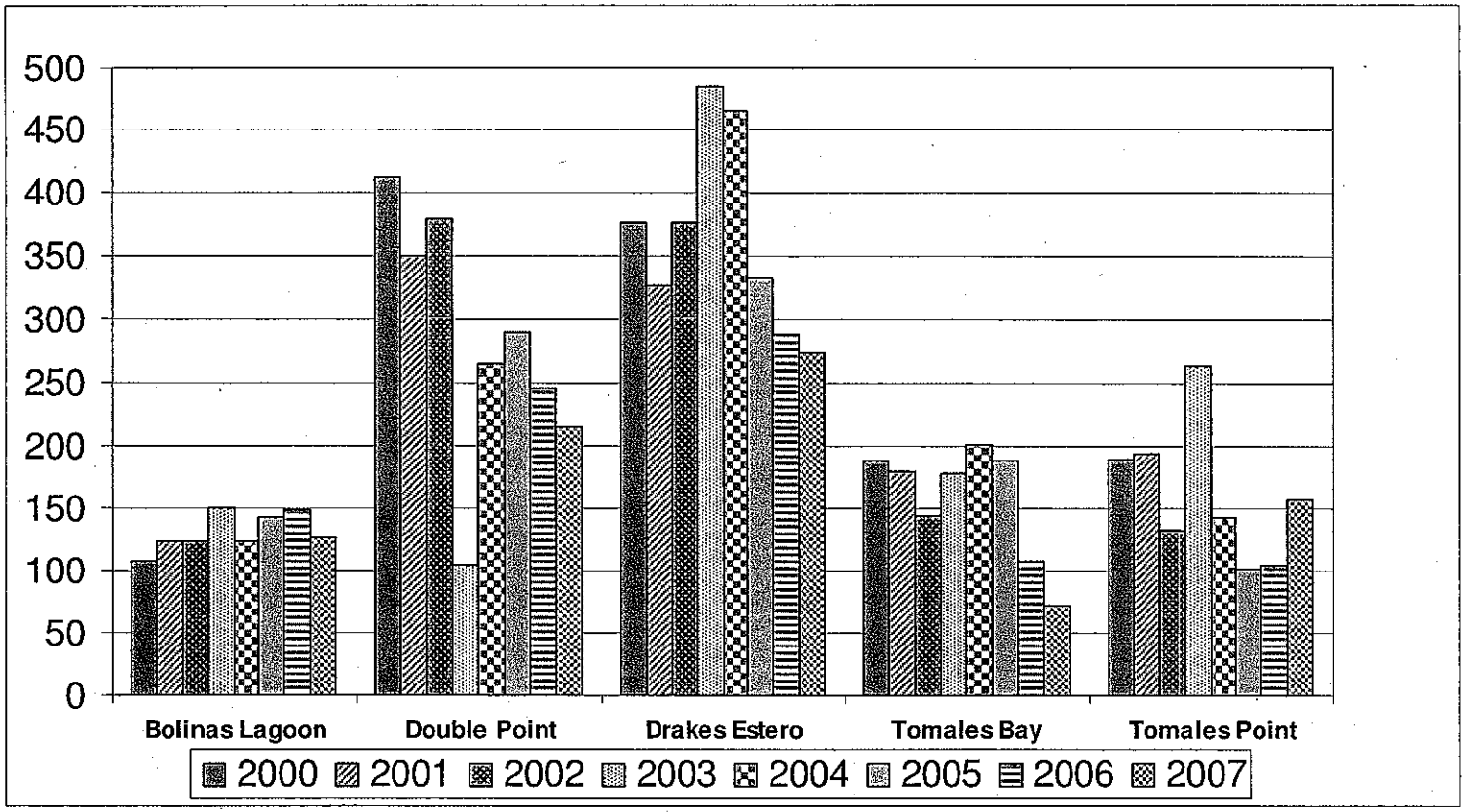


Figure 4. Maximum harbor seal pup counts (*Phoca vitulina richardii)* at the dominant Marin County pupping locations, 2000-2007. The maximums of each site may have been observed on different days.

Molting Counts

The maximum count of all seals during the 2007 molt season for all Marin County locations was 4218 seals. This fell below but within one standard deviation of the mean maximum molt count observed from 2000-07 (4331 ± 637.7, Figure 5). Similar to the pupping season, Drakes Estero and Double Point comprised 52% of the total seals counted during the molt season (Table 1).

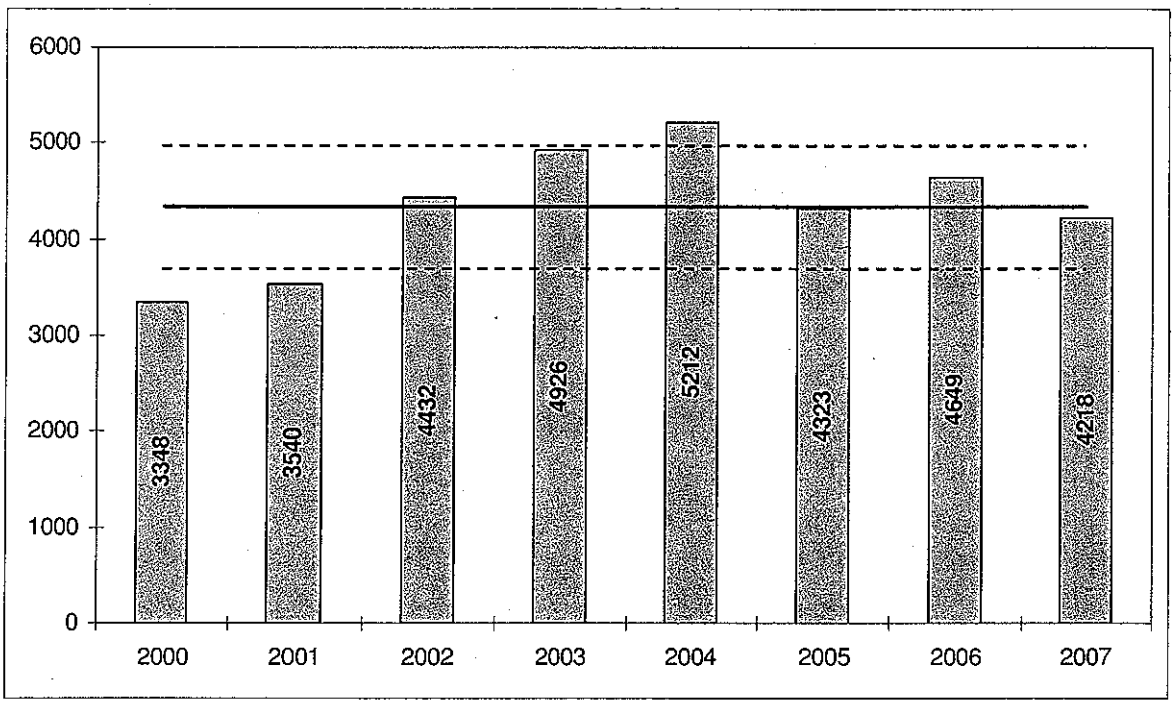


Figure 5. Maximum harbor seal counts during the molt season (June-July) for 2000-07 at Marin County locations. The solid line on the graph represents the mean of the maximum molt counts from 2000-07 (4331), and the dashed lines represent one standard deviation from the mean (637.7).

Disturbances

At the Marin County locations in 2007, 215 disturbances were recorded that elicited a response from harbor seals, representing the greatest number in the study period of 2000-07 (Table 3). Further analysis is required to determine if this increase in disturbances is statistically significant or related to an increase in survey effort. The most common disturbance source (76) was humans, which could have been a clammer, researcher, angler, or hiker (Table 3). Motorboats and non-motorboats had 51 disturbances combined, and a large portion of them were associated with the clammers in Tomales Bay. Bolinas Lagoon had the most disturbances (61), but Tomales Bay and Drakes Estero were close with 45 and 57 disturbances, respectively. Bolinas Lagoon has a subsite (Hwy 1) that is adjacent to a major roadway. This site is subject to loud, sudden noises from vehicles, as well as visitors that approach the seals. The disturbances at Tomales Bay were

Table 3. Identified sources of disturbances (head alert, flush, flush into water) for Marin County locations, from March 1st to July 31st, 2007.

	Motorboat		Non-Motor Boats		Vehicle		Dog		Aircraft		Human		Bird		Unknown		Other		Total
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
2000	14	10.6	9	6.8	0	0.0	0	0.0	14	10.6	30	22.7	20	15.2	41	31.1	4	3.0	**132**
2001	15	10.6	17	12.0	2	1.4	0	0.0	4	2.8	48	33.8	9	6.3	32	22.5	15	10.6	**142**
2002	16	8.9	20	11.1	8	4.4	0	0.0	9	5.0	72	40.0	10	5.6	38	21.1	7	3.9	**180**
2003	11	7.9	23	16.5	3	2.2	0	0.0	10	7.2	43	30.9	10	7.2	32	23.0	7	5.0	**139**
2004	1	1.0	10	10.0	7	7.0	2	2.0	3	3.0	39	39.0	7	7.0	24	24.0	7	7.0	**100**
2005	9	7.4	15	12.3	1	0.8	2	1.6	11	9.0	38	31.1	10	8.2	30	24.6	6	4.9	**122**
2006	13	7.9	16	9.7	4	2.4	1	0.6	8	4.8	59	35.8	16	9.7	36	21.8	12	7.3	**165**
2007	31	14.4	20	9.3	11	5.1	2	0.9	14	6.5	76	35.3	13	6.0	45	20.9	3	1.4	**215**
Average	**13.8**	**8.6%**	**16.3**	**11.0%**	**4.5**	**2.9%**	**0.9**	**0.6%**	**9.1**	**6.1%**	**50.6**	**33.6%**	**11.9**	**8.1%**	**34.8**	**23.6%**	**7.6**	**5.4%**	**149**

mostly related to passing boat traffic and recreational clammers. Hundreds of people dig for clams on the mudflats in Tomales Bay during low tide weekends. The Farallones Marine Sanctuary Association (FMSA) formerly coordinated a program that situated docents on the mudflats during these high visitation days to educate visitors and protect the seals, but this program was terminated in 2005. Disturbances at Drakes Estero, including Limantour Estero, resulted from hikers, clam diggers, and oyster operation activities. Tomales Point, Duxbury Reef, and Point Reyes Headlands received few to no disturbances (3, 0, 0) likely because of the inaccessibility of these sites.

In 2007, Bolinas Lagoon had the greatest disturbance rate (0.75 disturbances per hour), followed by Tomales Bay (0.68) (Figure 6). Of the sites that regularly have more than five disturbances per season, Point Bonita experienced the greatest change compared with 2006 with a 76.1% decrease in the disturbance rate (1.19 versus 0.28) (Figure 7). Double Point and Bolinas Lagoon saw a 67.2% and 16.7% increase in disturbance rates, respectively, while Tomales Bay and Drakes Estero had rates comparable to the previous season. The rates of disturbances vary greatly from year to year depending on activities at each location.

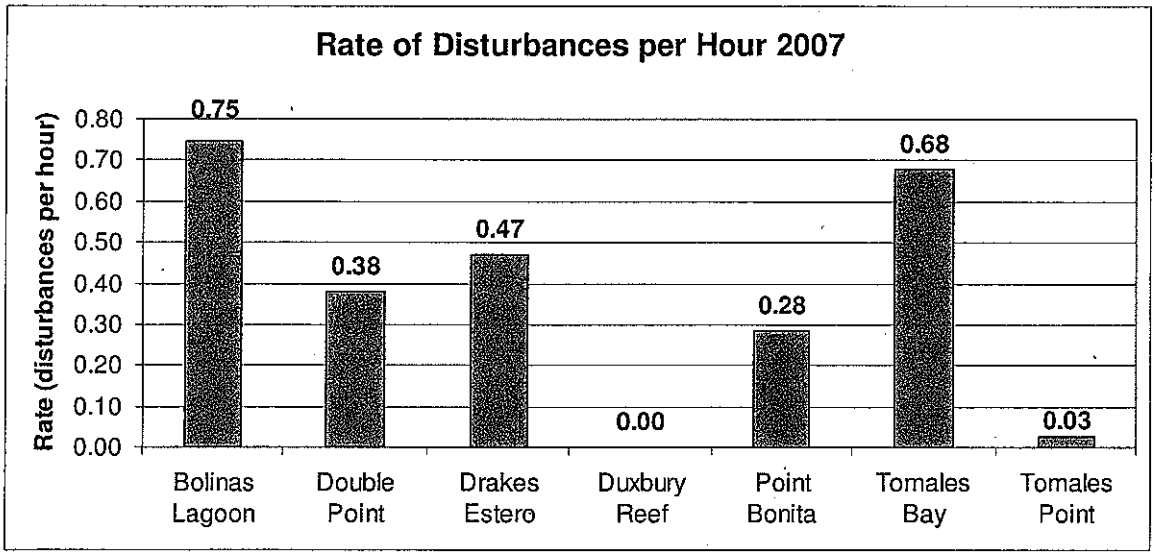


Figure 6. Rates of disturbances per hour at Marin County locations from March through July 2007. Only actual disturbances (head alert, flush, flush water) were used, and survey time was based on observation time for all complete surveys (with or without disturbances).

Summary by Site

Bolinas Lagoon

Bolinas Lagoon had 38 complete surveys between March 1st and July 31st, 2007. Of those surveys, 30 were on weekdays and 8 were on weekends. The maximum count during the breeding season had 262 adults and 126 pups. During the molting season, the maximum count was 448 seals (Table 1). Bolinas had the most disturbances of all sites in 2007 and the dominant

sources were humans and vehicles. This site is along scenic Highway 1 and many visitors stop to see the seals and approach them. Traffic noise also disturbs the seals. This was the only site that documented dog disturbances in 2007, and they were associated with human disturbances. One report documented visitors who drove by the haul-out site and "barked at seals". Bolinas Lagoon had the greatest disturbance rate of all locations in 2007 (0.75 disturbances per hour), and the rate increased 14.8% from 2006.

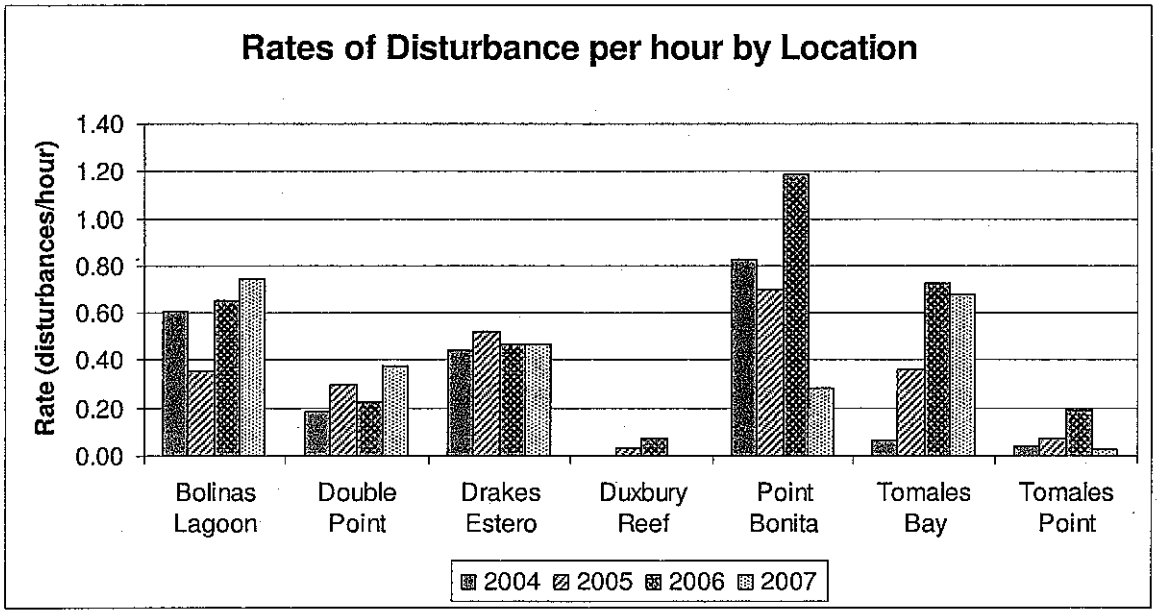


Figure 7. Rates of disturbances per hour at Marin County locations from March through July of 2004-2007. Only actual disturbances (head alert, flush, flush water) were used, and survey time was based on observation time for all complete surveys (with or without disturbances).

Double Point

Double Point had 30 complete surveys between March 1st and July 31st, 2007. Of those, 20 were on weekdays and 10 were on weekends. The maximum count during the breeding season was 469 adults and 215 pups. Molting season yielded a maximum count of 1190 seals (Table 1). Double Point's disturbances were moderate and came mostly from "unknown" sources and aircraft, which fly over the area at various heights. Rarely did the aircraft actually flush seals, but their noise at times elicited head alerts from the seals. Of the 25 actual disturbances, 14 were from an unknown source from the subsite *South Beach*. The bluffs over this beach are actively crumbling and perhaps small rockslides that observers can't see or hear elicited the flushes. Only once this season were people observed on the beach; it was during a weekend survey and no seals were hauled out on that portion of beach. Double Point had a substantial increase in the disturbance rate from last year (2006: 0.23, 2007: 0.38, 67.2% increase) due to increases in both aircraft and "unknown" sources.

Drakes Estero

The Drakes Estero complex which includes Limantour Estero had 40 complete surveys between March 1st and July 31st, 2007. Of those, 22 were on weekdays and 18 were on weekends. The maximum count during the breeding season was 759 adults and 273 pups, and the maximum molt count was 1005 (Table 1). Next to Bolinas Lagoon, Drakes Estero had the second highest disturbance count, with 57 disturbances within the breeding and molting seasons. The disturbance rate, however, was moderate compared to other sites (Figure 6). Most of the disturbances (26) were from human sources and this included hikers, anglers, swimmers, horseback riders, and recreational clammers. Clamming is popular on Drakes Beach, where seals do not always haul out in large numbers, but the activities at times affect seals on nearby sandbars. Fishermen are frequently seen on the tip of Limantour Spit in the exact area where seals haul out during the molting season. In addition, activities associated with the oyster operation in Drakes Estero at times disturbed harbor seals at the upper estero subsites. The disturbance rate for 2007 and 2006 were identical, with 0.47 disturbances per hour (Figure 7).

Duxbury Reef

Duxbury Reef had 33 complete surveys between March 1st and July 31st, 2007. Of those, 25 were on weekdays and 8 were on weekends. During the breeding season, the maximum adult count was 81 and the maximum pup count was 7, while during the molting season the maximum seal count was 56 (Table 1). Duxbury had the lowest number of seals and, as with the Point Reyes Headlands, no documented disturbances. Disturbances are rarely recorded at Duxbury Reef, possibly due to the low accessibility of the location.

Point Bonita

Point Bonita had 50 complete surveys between March 1st and July 31st, 2007. Of those, 41 were on weekdays and 9 were on weekends. During the breeding season, the maximum adult count was 226 and the maximum pup count was 6 pups, while during the molting season the maximum seal count was 166. In an effort to better document the seal numbers and disturbances, more pre-season surveys were conducted. The disturbances at Point Bonita were primarily from people on the beach, which often consisted of school groups. Because of repeated disturbances to harbor seals, the area below the paved walkway was closed to visitors in mid-June 2007. Future observations will tell the efficacy of this action. However, disturbance rates decreased substantially in 2007, with only 0.28 disturbances recorded per hour compared to the 2006 rate of 1.19 (76.1% decrease).

Point Reyes Headlands

Point Reyes Headlands had 16 complete surveys between March 1st and July 31st, 2007, and all but one of them were completed during weekdays. During the breeding season, the maximum adult count was 119 and the maximum pup count was 46, while during the molting season the maximum seal count was 312 (Table 1). This site rarely has disturbances because of its remoteness and inaccessibility. Most of the harbor seals were seen at a large elephant seal colony pocket beach. There were some vacated spaces on the beach during the elephant seal molt, but harbor seals were also seen in extremely close proximity to the elephant seals. Some surveys were hindered by heavy fog that is usually present in the Point Reyes Headlands.

Tomales Bay

Tomales Bay had 23 complete surveys between March 1st and July 31st, 2007. Of those, 11 were weekday and 12 were weekend surveys. During the breeding season, the maximum adult count was 226 and the maximum pup count was 72, while during the molting season the maximum seal count was 415 (Table 1). The pup count was the second lowest it has been since 2002 (Figure 4). There were 45 recorded disturbances, most of which were caused by boats and humans, including recreational clammers. Tomales Bay had the second highest disturbance rate of all locations, with 0.68 disturbances per hour, which was consistent with last year's rate. . The increase in disturbances in 2006 coincided with the cessation of a FMSA docent program that educated clammers to avoid seals from 1997 through 2005.

Tomales Point

Tomales Point had 22 complete surveys between March 1st and July 31st, 2007. Of those, 13 were on weekdays and 9 were on weekends. During the breeding season, the maximum adult count was 226 and the maximum pup count was 158, while during the molting season the maximum seal count was 626. Only three disturbances occurred at this location (human, bird, and unknown), and due to its remoteness, is not frequented by park visitors. Abalone divers were observed there during the breeding season, but they were never seen disturbing seals.

Regional Sites

Thirteen regional surveys occurred between March 10th and July 28th, 2007 at 20 different locations. Not all sites were surveyed on all scheduled days. Some sites were surveyed on days other than regional survey days, and therefore could not be used in this summary. Other sites had difficulty with weather on certain days. During the breeding season, a maximum of 3979 adults and 974 pups were observed, although the maximum counts may have occurred on different days for each location (Table 4). During the molting season, the combined maximum of all seals from each site was 4787. Marin County locations accounted for 73.2% (2916/3979) of the maximum adult/immature breeding count, 84.4% (765/974) of the maximum pup count, and 74.1% (3459/4787) of the maximum molt count.

Within the San Francisco Bay, high counts for seals occurred at Castro Rocks and Mowry Slough, as has been observed in the past. In San Mateo County the highest concentration of seals was on the coast at Fitzgerald Marine Reserve, but the most pups occurred at Pebble Beach (20). In Sonoma County, the Sonoma Coast location accounted for the most seals this year, which is consistent with previous data. No counts were conducted this year at Yerba Buena Island (in San Francisco Bay), or Fort Ross (in Sonoma County).

Disturbances in San Francisco Bay were only recorded at Castro Rocks, and it was from the CalTrans truck associated with the observers. At Fitzgerald Marine Reserve and Sonoma Coast, tide poolers and airplanes disturbed hauled out seals. At Jenner, kayakers, hikers, and divers caused disturbances.

Table 4. Regional surveys of harbor seal numbers in central California, March 1st through July 31st, 2007. Thirteen surveys were scheduled on alternating weekends, eight during the breeding season and five during the molt. ND=No data.

	Breeding Season					Molting Season			
Location	**n**	**Mean of adults**	**Standard error**	**Max of adults[1]**	**Max of pups[2]**	**n**	**Mean of adults**	**Standard error**	**Max of adults**
Sonoma County									
Sonoma Coast	5	146.4	18.33	190	35	3	203.7	23.84	251
Fort Ross	ND	ND	ND	ND	ND	ND	ND	ND	ND
Jenner	5	54.6	13.83	89	6	3	272.3	77.95	400
Marin County									
Tomales Bay	7	315.3	39.44	644	65	3	331	27.62	384
Tomales Point	7	190	41.19	506	105	2	301.5	230.5	532
Pt. Reyes Headland	6	34.67	8.22	119	46	2	79	6	278
Drakes Estero	6	573	61.07	683	273	3	650.33	141.05	932
Double Point	7	314.86	59.02	424	198	2	628	137	765
Duxbury Reef	8	26.3	8.81	84	4	5	17.2	10.74	56
Bolinas Lagoon	8	172.13	21.38	262	126	5	303.2	49.5	448
Point Bonita	7	74.29	21.74	148	5	5	105.8	18.46	153
San Francisco Bay									
Alcatraz	3	12	2.35	15	0	ND	ND	ND	ND
Castro Rocks	6	164	14.2	213	36	3	88.3	10.33	109
YBI	ND	ND	ND	ND	ND	ND	ND	ND	ND
Newark Slough	2	14	3	17	8	1	0	0	0
Mowry Slough	3	32.3	10.11	50	5	1	15	0	15
San Mateo County									
Point San Pedro	5	14.4	2.46	22	2	2	15.5	3.5	19
Cowell Ranch	4	70.3	10.94	86	18	2	79	1	80
Pescadero	5	32	4.22	41	6	3	29.7	12.25	54
Pebble Beach	5	75.6	13.22	117	20	3	95.3	4.37	104
Bean Hollow	5	6.8	2.63	15	1	3	13.3	2.91	18
Fitzgerald Marine Reserve	7	174.9	8.52	208	15	4	153	13.8	189
ALL LOCATIONS				**3979**	**974**				**4787**

[1]Based on the total for a single day

[2]Based on the total for the same single day as above

Conclusion

Highlights

- 36 volunteers completed 251 surveys at Marin County locations between March 1st and July 31st 2007, donating approximately 2152 hours of their time.

- A maximum of 2771 adults/immatures seals hauled out during the breeding season.
    - The 2007 maximum fell below but within one standard deviation of the mean number observed from 2000-07 (2954.8 ± 353.7).
    - The greatest number of adults hauled out at Drakes Estero (759), followed by Tomales Bay (481) and Double Point (469).

- A maximum of 903 pups were born in Marin haul outs.
    - The 2007 maximum pup count fell below one standard deviation from the mean maximum pup count from 2000-2007 (1154.5 ± 153.0).
    - The greatest number of pups was born at Drakes Estero (273), followed by Double Point (215).

- A maximum of 4218 animals molted at Marin County sites.
    - The 2007 maximum molt count fell below but within one standard deviation of the mean maximum molt count observed from 2000-07 (4331 ± 637.7, Figure 5).
    - Double Point had the most molting seals (1190), followed by Drakes Estero (1005).

- 215 disturbances were recorded during surveys.
    - The most common categories of disturbances were human (35.3%), unknown (20.9%), and motor boat (14.4%).

- Regional surveys occurred 13 times throughout the season, which include Sonoma, Marin, San Francisco, and San Mateo counties.
    - Marin County locations accounted for 73.2% (2916/3979) of breeding season adults/immatures, 84.4% (765/974) of pups, and 74.1% (3459/4787) of seals during the molting season.

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The Department of the Interior protects and manages the nation's natural resources and cultural heritage; provides scientific and other information about those resources; and honors its special responsibilities to American Indians, Alaska Natives, and affiliated Island Communities.

NPS D-553, June 2008

National Park Service
U.S. Department of the Interior

Natural Resource Program Center
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EXPERIENCE YOUR AMERICA ™

"Kevin Lunny"
<kevin@drakesbayoyster.com>

10/16/2008 05:53 PM

To "'Roberts, Susan'" <SRoberts@nas.edu>, "'Goodman, Corey'" <Corey.Goodman@Pfizer.com>, <David_Graber@nps.gov>, <Don_Neubacher@nps.gov>,
cc "'Thompson, Professor Paul M.'" <lighthouse(b) (6) [redacted] "'David M. Weiman'" <agresources@erols.com>, "'Walsh, Jennifer'" <JWalsh@nas.edu>, "'Chiarello, Heather L.'"
bcc

Subject RE: NRC study of Drakes Estero

Dr. Roberts,

DBOC will be happy to participate with the visit from Dr. Thompson as well as any others. Any time on the 29th or the 30th is OK. Your later email mentions Thursday the 30th at 10:30 AM. This will work just fine. Please send me the entire schedule for the visit and let me know if we can help in any other way.

Sorry for the delay with my response.

Kevin

From: Roberts, Susan [mailto:SRoberts@nas.edu]
Sent: Tuesday, October 14, 2008 2:29 PM
To: Kevin Lunny; Goodman, Corey; David_Graber@nps.gov; Don_Neubacher@nps.gov; Ben_Becker@nps.gov; Sarah_Allen@nps.gov; Jon_Jarvis@nps.gov; John_Dennis@nps.gov; gina_banks@feinstein.sen.gov
Cc: Thompson, Professor Paul M.; David M. Weiman; Walsh, Jennifer; Chiarello, Heather L.
Subject: NRC study of Drakes Estero

Greetings all,
One of the new members of the committee, Dr. Paul Thompson, is an expert in harbor seals and he has kindly offered to take a few extra days to visit Pt. Reyes and meet with you since he was not present at the committee's first meeting. He will be in the Pt. Reyes area on October 29 and 30 and would like to visit Drakes Bay Oyster Company and Pt. Reyes National Seashore to learn more about the issues with the harbor seals in Drakes Estero. This is not a committee meeting and no formal presentations will be given (Dr. Thompson will have already reviewed the presentations from the September meeting and other written materials provided to the committee). The priority will be to give Dr. Thompson an opportunity to gather information through Q&A. However, to ensure transparency in these discussions, we will organize the visits to allow limited public attendance and we will record them so that they will be available to those unable to attend. I'm writing to ask for your cooperation in arranging these visits. For each visit (DBOC and PRNS) we will need space to accommodate 10-12 people. Also, I ask that you cooperate in making it possible for us to record these sessions so that each speaker can be clearly heard - we will provide a digital recording device. Please let us know where and when on these two days you could host Dr. Thompson. Also, if you would like to be present during these discussions, please indicate that in your response. We will give you priority in the spaces made available for public attendance.

Thank you for your assistance in arranging these visits for Dr. Thompson. A staff member from the NRC will accompany Dr. Thompson for these visits and will record them for public access.

-Susan

****

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	BUDGET
✓	CENTRAL FILES

October 6, 2008

Don Neubacher, Superintendent
Point Reyes National Seashore
National Park Service
1 Bear Valley Road
Point Reyes Station, CA 94956

Dear Mr. Neubacher,

This letter requests that you affirm the application of law and policy in the preparation and presentation of the so-called "Becker Report."

On September 4, 2008, the Ocean Studies Board of the National Academy of Sciences/National Research Council (NAS/NRC) held its first panel meeting on ***"Best Practices for Shellfish Mariculture and the Effects of Commercial Activities in Drakes Estero, Pt. Reyes National Seashore, California."***

The first presentation on the panel's agenda was identified as **"Models for Harbor Seal Counts in Drakes Estero."** National Park Service (NPS) official, Dr. Ben Becker, presented the results of a new peer-reviewed report titled, ***"MODELING THE EFFECTS OF EL NINO, DENSITY-DEPENDENCE, AND DISTURBANCE ON HARBOR SEAL (PHOCA VITULINA) COUNTS IN DRAKES ESTERO, CALIFORNIA: 1997-2007"*** [Becker Report] authored by three members of the Point Reyes National Seashore (PRNS) staff – Dr. Ben Becker, Pacific Coast Learning Center, David Press, Inventory and Monitoring Program, and Sarah G. Allen, Lead Scientist. Dr. Becker presented the report's results on behalf of the authors.

Dr. Becker informed us that he was directed to initiate this paper in August 2007 – immediately after Senator Feinstein's meeting in Olema – and that the authors completed their work in

February 2008. It was then submitted to the Journal of Marine Mammal Science for peer review and, if and when approved, publication. On May 28, 2008, the Journal's editor, Dr. Daryl Boness, informed Dr. Becker that his revised Report was approved for publication. Several days later, on June 3, 2008, the Becker paper, now peer-reviewed and approved for publication, was submitted to the Ocean Studies Board (NAS/NRC), but not made public until the Board's September 4, 2008 hearing.

At no time between August 2007 when work on this science at Drakes Estero was initiated until the present have you or anyone from your staff informed Drakes Bay Oyster Company that this report was being prepared, underway or reviewed, consulted us about any aspect of it or invited us to review it as subsequently required by an agreement between DBOC and NPS when our current Special Use Permit (SUP) was executed.

At the conclusion of the September 4 meeting, an exchange between Dr. Becker and Dr. Goodman, recounted in Dr. Goodman's letter to the Ocean Studies Board, revealed that you and your staff intended this study to remain secret until presented at the Board's recent meeting. Why, in direct conflict with our permit agreements, the Park Service would want to invoke secrecy regarding the Report's preparation and presentation is not understood.

At and after the September 4 Ocean Studies Board meeting, the Becker Report and presentation generated a series questions about it's accuracy, assumptions and data, first by Ocean Studies Board panel members, and then by Dr. Goodman and Mr. Hulls. Several days later, the Marine Mammal Science Journal's editor, Dr. Daryl Boness, informed us that he asked Dr. Becker to respond to the issues raised about his report.

At DBOC and the Historic G Ranch, we grow oysters and we grow organic beef. We practice sustainable agriculture. We don't pretend to know much about computer modeling, regression analysis or a negative bionominal distribution – three technical concepts found in the Becker Report. But, we at DBOC know a whole lot about Drakes Estero, growing oysters and living respectfully with harbor seals.

Since last year, we have had to work – repeatedly – to overcome false and contradictory statements in the five versions of NPS Report, "*Drakes Estero, A Sheltered Wilderness Estuary*," in testimony and public statements, as well as in other documents. Now, the Becker Report

makes similar accusations of harm to harbor seals. The Federal government, the Department of Interior, and the National Park Service are governed by a series of laws, regulations, policies and procedures to ensure that you and your staff prepare science to the highest scholarly standards.

According to the NPS *Management Policies 2006*, *"the management of the national park system and NPS programs is guided by the Constitution, public laws, treaties, proclamations, executive orders, regulations and directives of the Secretary of the Interior and the Assistant Secretary for Fish, Wildlife and Parks. NPS policy must be consistent with these higher authorities and with appropriate delegations of authority."*

Issues pertaining to science, data, data analysis and data presentation regarding the Becker Report were addressed by Ocean Studies Board panel members as well as others. Given all that has occurred and various revelations about the Becker Report, we now ask about the applicable policies and procedures that governed its preparation and presentation in the first instance. Therefore, we ask the following:

[1] **National Parks Omnibus Management Act of 1998**, P.L. 105-391. On January 27, 1998, Congress enacted this Management Act. Section 202 states that the *"Secretary is authorized and directed to assure that the management of units of the National Park Service is enhanced by the availability and utilization of a broad program of the highest quality science and information."* **DBOC believes that this statutory requirement applies to the Becker Report. If not, please explain why not. Assuming it does, will you please certify that the Becker Report meets the "*highest quality science*" requirement of this law?**

[2] **White House, Office of Science and Technology Policy Federal Policy on Research Misconduct.** On December 6, 2000, the Executive Office of the President, White House Office of Science and Technology Policy (OSTP) published in the Federal Register, the Final Policy, *"Federal Policy on Research Misconduct."* According to that Federal Register Notice, in part:

> *Advances in science, engineering, and all fields of research depend on the reliability of the research record....*
>
> *Sustained public trust in the research enterprise also requires*

guidelines identify the ethical standards within which employees and volunteers will conduct NPS-sponsored scientific and scholarly activities.

This policy defines administrative review, distinguishing it from higher levels of review and states:

> *The scientific and scholarly peer review process outlined here does not eliminate the need for administrative review of scientific and scholarly activities by managers. Managers conduct administrative review to ensure that proposed activities are compatible with Park Service policies and regulations...and proposed activities are pertinent to park purposes, programs, and needs...*

Part III of this NPS policy statement sets forth a 12-point "Code of Scientific and Scholarly Conduct," which states, *"to enhance their contribution to quality, objectivity, utility, and integrity of such information, all NPS employees working with scientific and scholarly information will, in performing their duties,"* and is presented here, in full:

! *act in the interest of the advancement of knowledge and contribute the best, highest quality scientific and scholarly information for the NPS;*

! *conduct, process data from, and communicate the results of scientific and scholarly activities honestly, objectively, thoroughly, and expeditiously;*

! *be responsible for the entrusted resources, including equipment, funds, work time, employee work time, and prompt and accurate use and reporting of financial resources and scientific and scholarly work;*

! *fully disclose all research methods used, available data, and final reports and publications in a timely manner and consistent with applicable laws and policy;*

! *respect, to the fullest extent permitted by law, confidential and proprietary information regarding interests and resources that are studied or affected by scientific or scholarly activities or the*

resulting information;

- *neither hinder the scientific or scholarly activities of others nor engage in dishonesty, fraud, deceit, misrepresentation, coercive manipulation, or other scientific or scholarly misconduct;*

- *welcome constructive criticism of scientific and scholarly activities, welcome and participate in appropriate peer reviews, critique others' work respectfully and objectively, and substantiate comments with care;*

- *be diligent in creating, using, preserving, documenting, and maintaining collections and data, ensuring established quality assurance and quality control programs, follow the NPS's records retention policies, and comply with Federal law and agreements related to use, security, and release of confidential and proprietary data;*

- *adhere to appropriate standards for reporting the results of scientific and scholarly activities, including respecting the intellectual property rights of others;*

- *to the extent possible and practical, differentiate among facts, opinions, hypotheses, and professional judgment in reporting the results of scientific and scholarly activities to others, including scientists, decision makers, and the public;*

- *be responsible for the quality of collected data and interpretations, and for the integrity of conclusions drawn in the course of scientific and scholarly activities; and*

- *place integrity, utility, and objectivity of scientific and scholarly activities and reporting of their results ahead of personal gain or allegiance to individuals or organizations.*

DBOC believes this policy applies to the Becker Report. If not, please explain why not. Assuming it does, will you please certify that the Becker Report fully adheres to each of the policies set forth in this "Interim Guidance Document?" Further, please certify that Becker and the co-authors, in the preparation, design, data management, completion and presentation of their Report followed each of the twelve requirements of the Code of Scientific and Scholarly Conduct.

All information disseminated by the NPS must comply with basic standards of quality to ensure and maximize the objectivity, utility, and integrity of information disseminated to the public.

A. Reliable Data. The National Park Service will ensure that information it releases will be developed from reliable data sources and will otherwise ensure information quality at each stage of information development. The NPS's methods for producing quality information will be made transparent, to the maximum extent practicable, through accurate documentation, use of appropriate internal and external review procedures, consultation with experts and users, and verification of the quality of the information disseminated to the public. The NPS will also keep users informed about corrections and revisions.

Information will be developed only from reliable data sources based on accepted practices and policies utilizing accepted methods for information collection and verification. It will be reproducible to the extent possible.

B. Accuracy and Timeliness. All information will be accurate, timely, and reflect the most current information available. All information sources will be documented.

IV. POLICIES AND INSTRUCTIONS

A. Information Approval. All information disseminated to the public must be approved by the appropriate program and/or regional office prior to its dissemination and must satisfy OMB and Departmental guidelines. The approval process will include documentation of the specific information quality standards used in producing the information in a way to substantiate the quality, utility, objectivity, and integrity of the information in a manner that conforms to OMB and Departmental guidelines.

DBOC believes that the Director's Order applies to the Becker Report. If not, please explain why not. Assuming it does, will you please certify that the Becker Report meets the "reliable data" standard as well as the "information quality at each stage of information development" standard. Will you also certify that the standards for transparency, accurate documentation, appropriate reviews, consultation with experts and verification requirements

confidence in the research record and in the processes involved in its ongoing development.

This policy applies to federally-funded research...

The policy establishes the scope of the Federal government's interest in the accuracy and reliability of the research record and the processes involved in its development. It consists of a definition of research misconduct and basic guidelines for the responses of Federal agencies and research institutions to allegations of research misconduct. .

DBOC believes this policy applies to the Becker Report. If not, please explain why not. Assuming it does, will you please certify that the Becker Report meets the over-arching accuracy and reliability standards and did not violate the Federal research misconduct policy?

[3] **Data Quality Act.** The Data Quality Act [DQA], P.L. 106-554, Section 515, December 21, 2000, requires that guidelines be developed that provide guidance to Federal agencies *"for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by Federal agencies..."* In February, 2002, OMB published guidelines in the Federal Register and the Department of the Interior did the same. **DBOC believes that the DQA applies to the Becker Report. If not, please explain why not. Assuming it does, will you please certify that the Becker Report meets the DQA requirement of "*maximizing quality*" and, will you do the same for "*objectivity, utility of information (including statistical information), and integrity?*"**

[4] **Director's Order # 11B, Pursuant to the DQA.** According to *NPS Management Policies 2006* source book, *"primary source of policy is the publication, Management Policies 2006. Director's Orders supplement and may amend Management policies."* On October 16, 2002, then NPS Director, Fran Mainella, issued DIRECTOR'S ORDER # 11B, *"Ensuring Quality of Information Disseminated by the National Park Service."*

According to this Order, in part and excerpted:

were fully met as required? And, will you also certify that, as required, the information was accurate, timely and reflected the most current information available? Finally, please certify that all information publicly disseminated was "approved by the appropriate program and/or regional office prior to its dissemination" and that it satisfied "OMB and Departmental guidelines."

[5] **Peer Review Policy**. OMB, Final Information Quality Bulletin for Peer Review, Office of Management and Budget, Executive Office of the President. Pursuant to the DQA, on January 15, 2005, OMB published the Federal Peer Review Policy Bulletin in the Federal Register. According to that formal Notice:

> *Peer review is one of the most important procedures used to ensure that the quality of published information meets the standards of the scientific and technical community. It is a form of deliberation involving an exchange of judgments about the appropriateness of methods and the strength of the author's inferences. Peer review involves the review of a draft product for quality by specialists in the field who were not involved in producing the draft.*
>
> *The peer reviewer's report is an evaluation or critique that is used by the authors of the draft to improve the quality of the product. Peer review typically evaluates the clarity of the hypotheses, the validity of the research design, the quality of the data collection procedures, the robustness of the methods employed, the appropriateness of the methods for the hypotheses being tested, the extent to which the conclusions follow from the analysis, and the strengths and limitations of the overall product.*

DBOC believes this policy applies to the Becker Report. If not, please explain why not. Assuming it does, will you please certify that the Becker Report meets the standards of peer review as set forth in this policy?

[6] **NPS Management Policies, 2006: Scholarly Analysis Standard**. The Management Policies 2006, at Section 2.1.2, titled, "*Scientific, Technical and Scholarly Analysis*," states, "*decision-makers and planner will use the best available scientific and technical information and scholarly analysis to identify appropriate management actions for protection and use of park resources.*" **DBOC believes this policy applies to the**

Becker Report. If not, please explain why not. Assuming it does, will you please certify that the Becker Report followed the *"scientific, technical and scholarly analysis"* principles and standards set forth in this policy?

[7] **Kempthorne Ethics Policy, US Department of the Interior**. On July 27, 2007, slightly more than a year after being confirmed, Dirk Kempthorne, Secretary, US Department of the Interior, circulated a Memorandum to all 80,000 Interior Department employees titled, "*Promoting Ethics, the Public Interest, and Respectful Behavior*." Five "ideals" were cited, the third of which required, *"compliance with applicable laws, policies and procedures regarding the development and disclosure of science."* **DBOC believes this policy applies to the Becker Report. If not, please explain why not. Assuming it does, will you please certify that the Becker Report properly adhered to the ethical standards pertaining to both the *"compliance with applicable laws, policies and procedures"* standard as well as the *"development and disclosure"* of science?**

[8] **NPS Interim Guidance Document Governing Code of Conduct, Peer Review, and Information Quality Correction for National Park Service Cultural and Natural Resource Disciplines.** The NPS, on January 31, 2008, issued a new comprehensive, 20-page collection of policies detailing a scientific code of conduct, peer review standards and procedures, ethics policies and information quality policies and procedures to implement the requirements of the Data Quality Act. According to this NPS policy:

> *The scientific and scholarly guidance presented in this document ensures that the review requirement is met using a consistent, conscientious, and appropriate level of effort. Such technical peer review is essential to demonstrate the professional stature and ensure the accountability of the National Park Service's acquisition and application of scientific and scholarly information. Such scientific peer review complements, and is part of, administrative review.*

Defining the scope of these policies, NPS states:

> *These guidelines apply to all scientific and scholarly information and assessments produced, used, or sponsored by the NPS. These*

[9] **Confirmation Hearings, Director Bomar.** NPS Director, at the May 21, 2006, Senate Confirmation hearing, in her prepared statement stated to the Senate Energy Committee, *"while park superintendents and program managers are vested with much authority, it comes with an equal amount of responsibility that demands high quality results, stellar performance and the utmost levels of accountability."* **DBOC concurs with Director Bomar's statement and believes it applies to directives given by you for the preparation and presentation of the Becker Report. Please certify that responsibility, high quality results, stellar performance and the utmost accountability was achieved in the preparation and presentation of the Becker Report.**

[10] **Oversight Hearing, House Natural Resources Committee on Science Integrity.** Assistant Secretary Laverty testified before the Committee last May. In response to a question from Parks Subcommittee Chair, Rep. Raul Grijalva who inquired about the scientific Code of Conduct, he stated, *"I would be happy to share with you the letter I sent to the Department folks, to both Fish and Wildlife Service and the Park Service that established my personal code of conduct and how I was going to operate, how I was going to establish that set of principles for my staff. I believe that we have a very, very solid platform to work. We can assure that."* **Please certify that the preparation and presentation of the Becker Report fully met the principles and standards referenced by Assistant Secretary Laverty.**

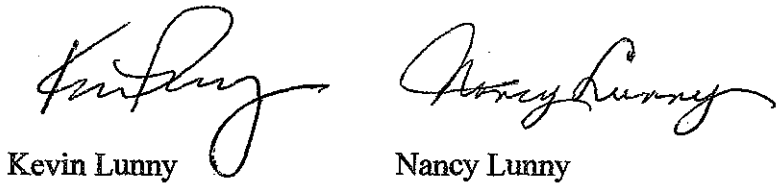
[11] ***NPS Management Policies, 2006*, Introduction, Law, Policy and Other Guidance.** The very first page of the Introduction to "Management Policies, 2006," entitled "Law, Policy and Other Guidance," states, *"this volume is the basic Service-wide policy document of the National Park Service. Adherence to policy is mandatory unless specifically waived or modified by the Secretary, the Assistant Secretary, or the Director."* **Were waivers, at any time or in any manner, issued by the Secretary, Assistant Secretary or the Director?**

[12] **Ethical Standards – Dignity and Respect.** Finally, the Kempthorne Ethics policy, July 2007, also states, *"we also treat each other, and the public whom we*

serve with dignity and respect. The Department's policy in this area is set forth at 43 CFR, Section 20.501." **Will you please certify that, according to and consistent with Interior Department ethics policy, the Lunny family was treated by you with "*dignity and respect?*"**

We respectfully request that responses be expedited. NPS made the Becker Report the centerpiece of your presentation to the Ocean Studies Board. Given the questions that have been raised about that report and in consideration of the Board's limited timetable, it is important that your responses be available as quickly as possible.

Sincerely,



Kevin Lunny Nancy Lunny

cc: Dr. Susan Roberts, Executive Director, Ocean Studies Board
Dr. Pete Peterson, Chair, Ocean Studies Board Panel
Jon Jarvis, Regional Director, Pacific West Region, National Park Service
Dr. John Dennis, Deputy Chief Scientist, National Park Service
Dr. Ben Becker, Pacific Coast Science and Learning Center, Point Reyes National Seashore
Dr. Sarah Allen, Lead Scientist, Point Reyes National Seashore
David Press, Inventory and Monitoring Program, Point Reyes National Seashore
Dr. Corey Goodman, Marshall, CA
John Hulls, Point Reyes Station

Don Neubacher/PORE/NPS
08/26/2008 08:43 AM

To "Kevin Lunny" <kevin@drakesbayoyster.com>
cc "Susan Roberts" <sroberts@nas.edu>
bcc Holly Bundock/OAKLAND/NPS@NPS; Jon Jarvis/OAKLAND/NPS@NPS
Subject Re: NAS / Drakes Estero

Kevin, thanks for the offer and we appreciate you checking with us. Because of safety and other concerns--life jackets, etc, we are not sure about your offer. We are under the impression that the vessels for the public would have to be Coast Guard approved for transport. In addition, law enforcement staff have reviewed your operating permit and this type of NAS activity is not allowable under your current permit and the administrative law that governs the DBOC use of the area. Regardless, we have managed the areas as wilderness; thus, we would have to do a minimum tool and NEPA compliance process because this activity may be scrutinized and would require issuance of a new permit. At this late date, as required by policy and law, it would not be possible to "make a diligent effort to involve any interested and affected public that exist" (Director's Order 12)(CEQ 1506.6).

I told Susan we can explore other ways with you (kayaks, research trips, your operations) to get the committee out in the Estero at a later date. We agree getting a perspective from the water would be important for all parties. And, again, we appreciate you working on this access issue with us.

Don

Don Neubacher
Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

415-464-5101 (office)
415-663-8132 (fax)

The National Park Service cares for special places saved by the American people so that all may experience our heritage.
"Kevin Lunny" <kevin@drakesbayoyster.com>

"Kevin Lunny" <kevin@drakesbayoyster.com>
08/21/2008 03:25 PM

To "Don Neubacher" <Don_Neubacher@nps.gov>
cc "Susan Roberts" <sroberts@nas.edu>
Subject NAS / Drakes Estero

Don.

The Ocean Studies Board will be here in early September and have asked that we arrange an on-shore and off-shore tour. Board members indicated that a boat tour would be important.

We are modifying our barges to accommodate the group and working out the off-shore logistics. Susan Roberts, who is copied by this email, will be contacting you as well.

Please provide the necessary permit (or waiver) as appropriate. This is, of course, a one-time event.

Thank you.

Kevin Lunny

"Kevin Lunny"
<kevin@drakesbayoyster.com>
08/21/2008 12:42 PM
MST

To: <Kevin_McKay@nps.gov>
cc: <Paul_Robinson@nps.gov>
Subject: RE: Oyster Farm Housing

Kevin,

We got it. Thank you very much.

Kevin

-----Original Message-----
From: Kevin_McKay@nps.gov [mailto:Kevin_McKay@nps.gov]
Sent: Thursday, August 21, 2008 12:10 PM
To: Kevin Lunny
Cc: Paul_Robinson@nps.gov
Subject: RE: Oyster Farm Housing

Hi Kevin,

No problem, we had planned to include the past inspection report along with the most recent inspection report however we have included it with a letter that went out earlier this week on the 18th. Let me know if you have not received the letter.

Regards, Kevin

Kevin E. McKay
Special Park Uses Coordinator
National Park Service
Point Reyes National Seashore
Point Reyes, CA 94956
(415) 464-5111
Fax (415) 464-5182

"Kevin Lunny"
<kevin@drakesbayoyster.com>
08/18/2008 08:04
PM MST

To: "Kevin McKay" <Kevin_McKay@nps.gov>
cc: <Paul_Robinson@nps.gov>
Subject: RE: Oyster Farm Housing

Kevin,

We plan to submit our CDP application this week. It is very important that we have the JOC housing inspection records to refer to in this submittal. As you know, a portion of the Cease and Desist Order that was issued by the CCC against the JOC was related to the housing. Please forward these as soon as you can. You first agreed to get these to me two months ago. I don't want to delay our application submittal. (Sorry about the deadline.)

Kevin

From: Kevin Lunny [mailto:kevin@drakesbayoyster.com]
Sent: Sunday, August 10, 2008 7:55 PM
To: Kevin McKay (Kevin_McKay@nps.gov)
Subject: Oyster Farm Housing

Hi Kevin,

As you recall, on June 18th, you and Paul Robinson inspected the housing at the oyster farm. Both you and Paul agreed that the worker housing has improved significantly since the Lunnys took over the operations of the oyster farm. I asked for, and you agreed to provide, all the inspection reports of the Johnson Oyster Company housing prior to 2005. We are ready to re-submit our Coastal Development Permit application to the California Coastal Commission and we need these annual records to proceed.

You also told me that you would get back to me about transitioning to the new oyster SUP signed in April. Last I spoke with you; you were unaware that the Yovino-Young appraisal included the well in its valuation of the property. There is no real hurry on this one - we'll just keep paying the invoices that we receive for the old SUPs until you make the change.

Hopefully, you can just go to the files for the Johnson housing inspections that we need soon. Let me know if we can stop by and pick them up

Thank you,

Kevin Lunny

(b) (6) [redacted]

United States Department of the Interior

NATIONAL PARK SERVICE
Point Reyes National Seashore
Point Reyes, California 94956

D5031

August 18, 2008

Mr. Kevin Lunny
17171 Sir Francis Drake
P.O. Box 69
Inverness, CA 94937

Dear Kevin:

Per your request, enclosed is a copy of an employee housing inspection report for an inspection conducted by U.S. Public Health Service Consultant Paul Robinson at the Johnson's Oyster Company site in November of 2004. Our records reflect that this was the initial employee housing inspection conducted at the site. Subsequent employee housing evaluation reports were addressed to you during and/or after the transfer of the reservation of use and occupancy. CAPT. Paul Robinson with the United States Public Health Service recently completed an additional employee housing inspection in June of 2008. This report will be forwarded to you once completed.

In regards to the well and water previously permitted for the oyster operation site under Special Use Permit MSC-8530-6000-2010, we have temporarily suspended billing for this service while Michael Yovino-Young completes an appraisal to determine a fair market value both for this service and for the leach field located on National Park Service property. The leach field was previously permitted under Special Use Permit MSC-8530-6000-2011.

A copy of the Yovino-Young appraisal will be provided to you upon completion. If you have questions please contact Kevin McKay in the Special Park Uses Office (415) 464-5111.

Sincerely,

Don L. Neubacher
Superintendent

Enclosure
KEMcKay:kem 8/18/08

COPY

L1425
02-106

December 7, 2004

Mr. Tom Johnson
Johnson Oyster Company
P. O. Box 69
Inverness, CA 94937

Dear Mr. Johnson:

On November 23, 2004, US Public Health Service consultant Paul Robinson conducted a public health evaluation of the employee housing and commercial facilities at the Johnson Oyster Company. Chief Ranger Colin Smith represented the Point Reyes National Seashore and assisted with the evaluation.

Inspection of the employee housing at Johnson's Oyster Company included observing the structural condition of the residences and examining the water and wastewater systems. The commercial oyster harvesting and processing facility was also evaluated. Mr. Robinson strongly recommend that the homes be revisited in 30 to 45 days to ensure that deficiencies are corrected in a timely manner.

Main House

1. The electrical outlets in the kitchen within four feet of the sink must be GFCI protected.
2. Provide a battery for the smoke detector. Consider installing smoke alarms in all bedrooms.
3. Install a GFCI protected electrical outlet in the bathroom.

House on the Hill

1. Check the kitchen window sill for rain water leakage and repair if necessary.
2. Repair the severe water damage observed around the bathtub.
3. Install at least one smoke alarm in the house. Consider installing smoke alarms in all bedrooms.
4. Install a GFCI protected electrical outlet in the bathroom.
5. Install plate on living room light switch.

Trailer

1. This entire structure is in a poor state of repair and would require major work to bring it up to acceptable standards. Water damage was apparent in numerous places in the ceiling and around windows throughout the trailer. Window glass was broken in several windows. The front entry porch consists of rotting wood boards.
2. Check the kitchen window sill for leakage and repair if necessary.
3. Install at least one smoke alarm in the house. Consider installing smoke alarms in all bedrooms.
4. While the gas stove burners worked, the knobs to each burner were extremely difficult to turn. These should be repaired.

5. Repair the light fixture in the bedroom.
6. Install another hinge on the bedroom door so that it can open properly.
7. Replace the missing glass in the bedroom window.
8. The shower was severely water damaged requiring extensive repair.
9. Install plates on electrical outlets in the living room.
10. Replace the missing glass in the blue bedroom window.
11. Repair the leaking shower fixture.

Thank you for your attention to these matters.

Sincerely,

Don L. Neubacher
Superintendent

United States Department of the Interior

NATIONAL PARK SERVICE
Point Reyes National Seashore
Point Reyes, California 94956

D5031

May 19, 2008

Mr. Kevin Lunny
17171 Sir Francis Drake
Inverness, CA 94937

Dear Kevin:

CAPT. Paul Robinson with the United States Public Health Service has scheduled to conduct on site inspections of the ranch and oyster operation employee residential units within Point Reyes National Seashore on June 17th and 18th of 2008. The inspections will last approximately one to two hours and will include an evaluation of ranch water and wastewater systems. National Park Service Staff will accompany CAPT. Robinson during the inspections.

We will be contacting you prior to June 17, 2008 to inform you of a scheduled time of arrival. If you have questions or concerns please contact Kevin McKay, Special Park Uses Coordinator, at (415) 464-5111. Thank you for your help and cooperation in keeping Point Reyes National Seashore Ranches safe.

Sincerely,

Don L. Neubacher
Superintendent

KEMcKay:kem 5/19/08

Paul Hastings

Paul, Hastings, Janofsky & Walker LLP
55 Second Street
Twenty-Fourth Floor
San Francisco, CA 94105
telephone 415-856-7000 • facsimile 415-856-7100 • www.paulhastings.com

Atlanta
Beijing
Brussels
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Frankfurt
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Milan
New York
Orange County
Palo Alto
Paris
San Diego
San Francisco
Shanghai
Tokyo
Washington, DC

(415) 856-7427
michaelsharpless@paulhastings.com

February 5, 2008 73344.00002

VIA UPS OVERNIGHT

George Turnbull
Deputy Regional Director
National Park Service
1111 Jackson Street
Suite 700
Oakland, CA 94607-4807

Re: Drakes Bay

Dear Mr. Turnbull:

On behalf of Drakes Bay Oyster Company, please find enclosed documents as required by section 3.2.10 of the Consent Order.

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Michael Sharpless

Michael Sharpless
Senior Environmental Paralegal

Enclosures

cc: Zack Walton w/o Enclosures
LEGAL_US_W # 58132312.1

George Turnbull/OAKLAND/NPS
01/29/2008 05:35 PM

To Jon_Jarvis@nps.gov, "Kevin Lunny" <kevin@drakesbayoyster.com>, "Walton; Zachary R." <zacharywalton@paulhastings.com>
cc
bcc
Subject Draft SUP

Kevin/Zach,

Attached is a redline draft SUP with the revisions we agreed upon Friday. I assume you'll get us the oyster poundage figure so we can complete the signable document? Let me know if you need anything else....

George T.

DBOC Draft SUP 1.28.08 - redline shows differences with NPS 1.11.08 version.doc

Form 10-114
Rev. Jan. 00

UNITED STATES DEPARTMENT OF THE INTERIOR
National Park Service

Special Use Permit

Name of Use: Aquaculture

Date Permit Reviewed 2007
Reviewed 20
Reviewed 20
Expires November 30, 2012

Permit # MISC-8530-6000-8002
Type Park Code No. #

Long Term X
Short Term

Point Reyes National Seashore
Name of Area

Drakes Bay Oyster Company
17171 Sir Francis Drake Blvd.
Inverness, CA 94937
(415) 669-1149

is hereby authorized for a period ("Term") commencing on _____, 20078 ("Commencement Date") and terminating on November 30, 2012 ("Expiration Date") to use the following described land, improvements, and waters in the following area:

the lands and improvements at Drakes Bay Estero at the former Johnson's Oyster Site consisting of approximately 1.1 acres of land and improvements designated as the "SUP Area" on the map attached hereto as Exhibit B ("Drake's Estero Oysters – SUP & ROP"); the waters designated as the "SUP Area" on the map attached hereto as Exhibit A ("Drake's Estero Aquaculture & CDFG Leases, NPS Resources and SUP Area"); the land designated as the "Well Area" on the map attached hereto as Exhibit D ("Drakes Bay Oyster Company Well Area"); and the land designated as the "Sewage Area" on the map attached hereto as Exhibit E ("Drakes Bay Oyster Company Sewage Area"). Collectively, the areas so designated shall be referred to as the "Premises." The Premises governed by this Permit do not include the area designated as the ROP Area on the map attached hereto as Exhibit B.

Field Code Changed

For the purpose(s) of:

Use of the area designated as the "SUP Area" on the map attached hereto as Exhibit B for the purpose of processing shellfish, the interpretation of shellfish cultivation to the visiting public, and residential purposes reasonably incidental thereto. Use of the area designated as the "SUP Area" on the map attached hereto as Exhibit A for the purpose of shellfish cultivation. Use of the area designated as the "Well Area" on the map attached hereto as Exhibit D for the purpose of supplying water for the Drakes Bay Oyster Company facilities using Permittee well, pump, and pipelines. Use of the area designated as the "Sewage Area" on the map attached hereto as Exhibit E for the purpose of use and maintenance of existing sewage pipeline and sewage leachfield to service the Drakes Bay Oyster Company facilities. Collectively, the uses set forth in this paragraph shall be referred to as the "Permitted Uses."

Authorizing legislation or other authority (RE – DO-53): 16 U.S.C. 1, 1a-1, 3 & 459c; the Reservation of Use and Occupancy.

NEPA & NHPA Compliance: NEPA compliance pending

PERFORMANCE BOND:	Required	Not Required X	Amount:	Field Code Changed
LIABILITY INSURANCE:	Required X	Not Required	Amount: As set forth in Article 15 of this Permit.	Field Code Changed

ISSUANCE of this Permit is subject to the terms, covenants, obligations, and reservations, expressed or implied herein and to the payment to the U.S. Dept. of the Interior, National Park Service of the sum of **$2,800.00** per year, plus an amount to be determined by appraisal for the use of the Sewage Area and the Well Area including water use.

PERMITTEE:_____
Signature Organization Date

Authorizing Official: _____ George Turnbull _____

Signature | Deputy Regional Director | Date

Additional Authorizing Official: _____
(If Required)

Signature | Title | Date

LIST OF EXHIBITS

EXHIBIT A: Map – Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area

EXHIBIT B: Map – Drake's Estero Oysters – SUP & ROP

EXHIBIT C: Drakes Estero Aquaculture and Harbor Seal Protection Protocol

EXHIBIT D: Map – Drakes Bay Oyster Company Well Area

EXHIBIT E: Map – Drakes Bay Oyster Company Sewage Area

CONDITIONS OF THIS PERMIT

1) DEFINITIONS

As used in this Permit, the following terms shall have the following meanings:

a) "Agency" means any agency, department, commission, board, bureau, office or other governmental authority having jurisdiction.

b) "Applicable Laws" includes, without limitation all present and future statutes, regulations, requirements, Environmental Requirements, guidelines, judgments, or orders of any Agency or judicial body, whether now existing or hereafter established, relating to or affecting the Premises or the use or occupancy of the Premises.

c) "Commencement Date" is as defined on the Cover Page of this Permit.

d) "Cyclic Maintenance" means (i) the performance by Permittee of all repairs, maintenance, or replacement-in-kind necessary to maintain the Premises and the existing improvements thereon in good order, condition, and repair; (ii) housekeeping and routine and periodic work scheduled to mitigate wear and deterioration without materially altering the appearance of the Premises; (iii) the repair or replacement-in-kind of broken or worn-out elements, parts or surfaces so as to maintain the existing appearance of the Premises; and (iv) scheduled inspections of all building systems on the Premises.

e) "Default" means Permittee's failure to keep and perform any of the Provisions of this Permit.

f) "Environmental Requirements" means, without limitation, all standards or requirements relating to the protection of human health or the environment such as:

   a. standards or requirements pertaining to the reporting, permitting, management, monitoring, investigation or remediation of emissions, discharges, releases, or threatened emissions, releases or discharges of Hazardous Materials into the air, surface water, groundwater, or land;

   b. standards or requirements relating to the manufacture, handling, treatment, storage, disposal, or transport of Hazardous Materials; and

   c. standards or requirements pertaining to the health and safety of employees or the public.

g) "Expiration Date" is as defined on the Cover Page of this Permit.

h) "Hazardous Materials" means, without limitation, any material or substance, whether solid, liquid, or gaseous in nature,

   a. the presence of which requires reporting, permitting, management, monitoring, investigation or remediation under any Environmental Requirement;

   b. that is or becomes defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "pollutant," "discharge," "waste," "contaminant," or "toxic contaminant" under any Environmental Requirement, or any above-ground or underground storage containers for the foregoing;

   c. that is toxic, explosive, corrosive, flammable, infectious, radioactive, reactive, carcinogenic, mutagenic, or otherwise hazardous to human health or the environment and is or becomes regulated under any Environmental Requirement;

   d. that contains gasoline, diesel fuel or other petroleum hydrocarbons or derivatives or volatile organic compounds, or is an above-ground or underground storage container for same;

e. that contains polychlorinated biphenyls (PCBs), asbestos, asbestos-containing materials or urea formaldehyde foam insulation; or

f. that contains radon gas.

i) "Hazardous Materials Occurrence" means any use, generation, treatment, keeping, storage, transport, release, disposal, migration, or discharge of any Hazardous Materials from, on, under or into the Premises or Point Reyes National Seashore ("Point Reyes") that causes any environmental contamination.

j) "Improvements or Alterations" means any construction that does not fall within the definition of Cyclic Maintenance.

k) "NPS" means the management officials in charge of the administration and operation of Point Reyes, including the Superintendent or his/her designee(s).

l) "Park" means, without limitation, all lands, waters and structures within the legislative boundaries of the Point Reyes National Seashore, all natural and cultural resources within such boundaries, and any other property within such boundaries belonging to Point Reyes. As appropriate given the context, this term also includes the visiting public and/or Point Reyes employees.

m) "Permit" means this instrument which contains those certain termination and revocation provisions as provided for herein.

n) "Permitted Uses" is as defined on the Cover Page of this Permit.

o) "Personal Property" means all furniture, fixtures, equipment, appliances and apparatus placed on the Premises that neither are attached to nor form a part of the Premises. Personal Property also includes any trailers, modular units, and/or temporary structures owned by Permittee.

p) "Point Reyes" means Point Reyes National Seashore.

q) "Premises" is as defined on the Cover Page of this Permit.

r) "Provision" shall mean any term, agreement, covenant, condition or provision of this Permit or any combination of the foregoing.

s) "ROP" or "Reservation of Use and Occupancy" means the Reservation of Use and Occupancy purchased by the Permittee in 2005. In 1972 the United States of America purchased Johnson Oyster Company's property, subject to a Reservation of Use and Occupancy on approximately 1.5 of those acres for a period of forty (40) years. This Reservation of Use and Occupancy expires on November 30, 2012.

t) "SUP" means this Permit.

u) "Term" is as defined on the Cover Page of this Permit.

v) "Termination Date" means the Expiration Date or such earlier date as this Permit is terminated or revoked pursuant to any Provision of this Permit.

2) GENERAL CONDITIONS

a) The Permittee shall exercise this privilege subject to the supervision of the Superintendent, and shall comply with all Applicable Laws.

b) Permit and Approvals – Except as otherwise provided in this Permit, Permittee shall be responsible for obtaining, at its sole cost and expense, all necessary permits, approvals or other authorizations relating to Permittee's use and occupancy of the Premises.

c) Damages - The Permittee shall pay the United States for any damage resulting from this use which would not reasonably be inherent in the use which the Permittee is authorized to make of the land and areas described In this Permit.

d) Benefit - Neither Members of, nor Delegates to Congress, or Resident Commissioners shall be admitted to any share or part of this Permit or derive, either directly or indirectly any pecuniary benefits to arise therefrom: Provided, however, that nothing herein contained shall be construed to extend to any incorporated company if the Permit be for the benefit of such corporation.

e) Assignment and Subletting - This Permit may not be transferred or assigned without the consent of the Permitter, in writing. Permittee shall not sublet the Premises or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with this Permit without the prior written approval of the Permitter.

f) Revocation - This Permit may be terminated upon Default or at the discretion of the Permitter.

g) The Permittee is prohibited from giving false information; to do so will be considered a breach of conditions and be grounds for revocation [Re: 36 CFR 2.32(4)]

3) USE OF PREMISES

a) Permittee is authorized to use the Premises only for the Permitted Uses.

b) Permittee shall not engage in any activity that may be dangerous or harmful to persons, property, or the Park; that constitutes or results in waste or unreasonable annoyance (including, without limitation, signage and the use of loudspeakers or sound or light apparatus that could disturb park visitors and wildlife outside the Premises); that in any manner causes or results in a nuisance; or that is of a nature that it involves a substantial hazard, such as the manufacture or use of explosives, chemicals or products that may explode.

c) The Parties hereby acknowledge and agree that Permittee's covenant that the Premises shall be used as set forth in this Article 3 is material consideration for Permitter's agreement to enter into this Permit. The Parties further acknowledge and agree that any violation of said covenant shall constitute a Default under this Permit and that Permitter may inspect the premises at any time.

d) This Permit is subject to the right of the NPS to establish trails and other improvements and betterments over, upon, or through the Premises and further to the use by travelers and others of such established or existing roads and trails. The Permittee understands that occasional park visitors are authorized to walk, use non-motorized watercraft, or hike in the various areas included in this Permit even though no trails are formally established.

e) Permitter reserves the right for Permitter, its employees, contractors and agents to enter and to permit any Agency to enter upon the Premises for the purposes of inspection, inventory or when otherwise deemed appropriate by the Permitter for the protection of the interests of Permitter, including Permitter's interests in any natural or cultural resources located on, in or under the Premises.

f) Permitter reserves the right at any time to close to travel any of its lands, to erect and maintain gates at any point thereon, to regulate or prevent traffic of any kind thereon, to prescribe the methods of use thereof, and to maintain complete dominion over the same; provided, however, that at all times during the Term, Permitter shall provide Permittee and Permittee's invitees with reasonable access to the Premises subject only to interruptions caused by necessary maintenance or administrative operations or by matters beyond Permitter's control.

g) Permittee hereby waives any claim for damages for any injury, inconvenience to or interference with Permittee's use and occupancy of the Premises, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by Permitter's exercise of its rights under this Article 3 except to the extent that the damages, expenses, claims or suits result from the willful misconduct or gross negligence of Permitter, its employees, contractors or agents; provided, further, that Permitter shall be liable only to the extent such claims are allowed

under the Federal Tort Claims Act.

h) Members of the general public visiting the Drakes Bay Oyster Company operation may park in the adjacent NPS parking area and walk over to the SUP or ROP areas.

i) While Permittee is permitted to use and operate motorized watercraft in Drakes Estero for the purpose of conducting daily business operations, which can include occasional inspections required by Agencies, no other use of Permittee's motorized watercraft is authorized. No motorized watercraft may enter the designated wilderness boundary (See "Existing Wilderness" on map attached hereto as Exhibit A). To protect water quality in the Estero, any additional or replacement boat motors obtained by Permittee must be four stroke motors.

j) Due to a lack of adequate parking space and restroom facilities for the public, barbecuing is not permitted in the Special Use Permit Area. To comply with this paragraph, Permittee will not encourage barbecuing in the SUP Area. Picnic tables will be provided by the NPS at the adjacent parking area.

k) Unauthorized discharge into the estuary is prohibited. This prohibition includes any discharge from processing facilities. Notwithstanding the foregoing, discharge of oyster wash water from dock and from hatchery operations is allowed if authorized by relevant Agencies.

l) In order to ensure public health and safety, Permittee will ensure that Permittee and Permittee's officers, agents, employees, and contractors comply with Applicable Laws regarding pets, including the NPS regulation at 36 C.F.R. § 2.15.

m) In order to ensure public health and safety, Permittee shall allow all appropriate Federal, State and/ or County agencies; including the United States Department of Health and Human Services, the State of California Department of Health Services and Marin County Community Development Agency Environmental Health Services, to conduct inspections on a routine basis.

4) SPECIAL PERMIT CONDITIONS

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a) If Permittee and Permitter disagree about an issue related to this Permit, they will first make a good faith effort to resolve such issue at the Park level. If they are unable to resolve the issue at the Park level, Permittee may request a review of the issue by the Regional Director.

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ab) Based upon the findings of an independent science review and/or NEPA compliance, Permitter reserves its right to modify the provisions of this Article 4. Permitter further reserves its right to incorporate new mitigation provisions based upon the findings of an independent science review.

i) The maximum annual production limit for oysters, rock scallops and clams will be approximately ~~700,000~~ _____ pounds.

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ii) No additional aquaculture racks and/or cultivation infrastructure will be constructed without the prior approval of the Permitter. Operation, repair, and maintenance of infrastructure currently being used for oyster cultivation is permitted.

iii) Permittee and Permitter acknowledge the importance of eelgrass within the ecology of the estuary. Permittee will not place bags for shellfish production onto eelgrass.

iv) Within sixty (60) days following the signing of this interim Permit, Permittee will submit for National Park Service approval a boating operations plan, which will indicate dedicated navigation routes, chosen to minimize impacts to eelgrass beds when accessing aquaculture racks and/or cultivation equipment.

v) To minimize the chances of introducing invasive species or pathological microorganisms to Drake's Estero, Permittee will only import shellfish in the form of larvae and seed. Within 30 days of the Commencement Date, Permittee shall produce sufficient evidence, for the review and approval of the Permitter, that larvae and seed from outside sources have been certified by the California Department of Fish and Game ("CDFG") to be

free of pathogens. If the Permitter determines that the ~~evidence~~ documentation is insufficient, Permittee shall cease from importing larvae within 30 days of receiving notification of the determination from the Permitter.

vi) Permittee will not introduce species of shellfish beyond those described in the existing leases from the CDFG. Permittee may seek to conform and/or modify these leases with the CDFG. Any modifications approved by CDFG will be considered by Permitter on a case-by-case basis, and Permittee may not implement any such modifications without the prior written approval of the Permitter.

vii) Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites. The Marine Mammal Protection Act, 16 U.S.C. 1361 et seq., includes a prohibition against any act of pursuit, torment or annoyance that has the potential to injure or disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering. The National Oceanic and Atmospheric Administration (NOAA) recommends maintaining a distance of at least 100 yards to avoid disturbance to seals. Permittee will maintain a distance of at least 100 yards from hauled out seals throughout the year. Permitter will monitor marine mammal populations in Drakes Estero. In addition, during the pupping harbor seal closure period, March 1-June 30, the designated wilderness area (outside of Permit area) is closed to all boats. Permittee will follow "Drakes Estero Aquaculture and Harbor Seal Protection Protocol" attached hereto as Exhibit C. If required by CDHS, watercraft may use the Main Channel identified in Exhibit C during the pupping harbor seal closure period only to access CDHS's sentinel monitoring station for marine biotoxins. Boats shall be operated at low speed, near the eastern shore, to minimize chance of disturbance to harbor seals. No other use of the Main Channel is authorized during the pupping harbor seal closure period.

c) Permittee's agreement to the provisions of this Permit does not waive Permittee's ability to take contrary positions with regard to similar provisions with other Agencies.

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5) ACCEPTANCE OF PREMISES

a) Prior to entering into this Permit, Permittee has made a thorough, independent examination of the Premises and all matters relevant to Permittee's decision to enter into this Permit, and Permittee is thoroughly familiar with all aspects of the Premises and is satisfied that they are in an acceptable condition and meet Permittee's needs, provided that Permittee and Permitter acknowledge that certain repairs are necessary to comply with Applicable Laws. Permittee will make such repairs at its sole cost and expense in compliance with Applicable Laws.

b) Permittee expressly agrees to use and occupy the Premises and all improvements thereon in their existing "AS IS" condition "WITH ALL FAULTS" and acknowledges that in entering into this Permit, Permittee does not rely on, and Permitter does not make, any express or implied representations or warranties as to any matters including, without limitation, the suitability of the soil or subsoil; any characteristics of the Premises or improvements thereon; the suitability of the Premises for the approved use; the economic feasibility of Permittee's use and occupancy of the Premises; title to the Premises; the presence of Hazardous Materials in, on, under or in the vicinity of the Premises; or any other matter. Permittee has satisfied itself as to such suitability and other pertinent matters by Permittee's own inquiries and tests into all matters relevant to determining whether to enter into this Permit and Permittee hereby accepts the Premises.

6) CONSTRUCTION OF IMPROVEMENTS OR ALTERATIONS

a) Permittee may only make those Improvements or Alterations to the Premises that relate to Permittee's use of the Premises as specified in Article 3, "Use of the Premises."

b) Permittee shall not undertake any Improvements or Alterations to the Premises (including installation of temporary equipment or facilities) without the prior written approval of Permitter.

c) As a prerequisite to obtaining approval for Improvements or Alterations, Permittee, at Permittee's sole cost and expense, shall submit design plans and any other relevant data for Permitter's approval.

d) Construction of Improvements or Alterations by Permittee shall be performed in accordance with all Applicable

Laws, including but not limited to general planning, building, and environmental laws and approved design plans and shall be undertaken and completed at Permittee's sole cost and expense.

e) Permittee shall, upon request, furnish Permitter with a true and correct copy of any contract, and any modification or amendment thereof, with Permittee's contractors, architects, or any other consultants, engaged in connection with this Permit.

f) Any Improvements or Alterations undertaken by Permittee shall be performed in a good and workmanlike manner and with materials of a quality and standard acceptable to Permitter. Permittee shall also construct, install and maintain equipment and any construction facilities on the Premises in a safe and orderly manner.

g) Permittee shall not construct any Improvements or Alterations outside the boundaries of the Premises.

h) Permitter in its discretion is entitled to have on the Premises at any time during the construction of Improvements or Alterations an inspector or representative who shall be entitled to observe all aspects of the construction on the Premises.

i) All lumber utilized at the site will be processed in compliance with current laws and regulations regarding wood treatments. This includes lumber utilized in assembly and repair of aquaculture racks.

j) As set forth in Article 17, title to any Improvements or Alterations to the Premises shall be and remain solely in the Permitter.

7) TREATMENT OF REFUSE

a) Refuse shall be promptly removed from within the boundaries of Point Reyes National Seashore and shall be disposed of in accordance with Applicable Laws.

b) Permittee will make best efforts to remove debris associated with aquaculture production operations including wood from racks, plastic spacers, unused shellfish bags, shellfish shells, and any other associated items.

8) PESTICIDE AND HERBICIDE USE

a) The National Park Service utilizes Integrated Pest Management ("IPM") to treat pest and vegetation problems. The goal of IPM is to use the least-toxic, effective methods of controlling pests and vegetation. Except for normal household purposes, Permittee shall not use any pesticides that do not comply with the IPM program. To this end, Permittee shall submit in writing to Permitter, a request for the use of pesticide(s) or herbicide(s) and shall not use any pesticide(s) or herbicide(s) until Permittee has received an express written authorization therefor from Permitter.

b) Permittee shall manage, treat, generate, handle, store and dispose of all pesticides and herbicides in accordance with Applicable Laws, including reporting requirements.

9) FIRE PREVENTION AND SUPPRESION

a) Permittee and its employees, agents, and contractors shall, in Permittee's use and occupancy of the Premises, take all reasonable precautions to prevent forest, brush, grass, and structural fires and shall, if safety permits, assist the Permitter in extinguishing such fires on the Premises.

10) EXCAVATION, SITE AND GROUND DISTURBANCE

a) Permittee shall not cut, remove or alter any timber or any other landscape feature; conduct any mining or drilling operations; remove any sand, gravel or similar substances from the ground or watercourse; commit waste of any kind; or in any manner change the contour or condition of the Premises without the prior written approval of the Permitter. Except in emergencies, Permittee shall submit requests to conduct such activities in writing to the Permitter not less than sixty (60) days in advance of the proposed commencement date of any such activities.

b) If approval of activities referenced above in Section10(a) is granted, Permittee shall abide by all the terms and conditions of the approval, including provisions pertaining to archaeological resources.

c) No soil disturbance of any kind may occur in the vicinity of a known archeological site, without the presence of an NPS archeological monitor.

11) NONPOINT SOURCE POLLUTION

a) The Permittee shall comply with all Applicable Laws regarding non-point source pollution (including the protection of beneficial uses of waters as designated by the State of California). Further, Permittee's use and occupancy of the Premises shall be designed to minimize, to the greatest extent feasible, non-point source pollution within National Park Service boundaries or on adjacent lands.

b) Except Aas set forth in Section 3(k) of this Permit, no discharge into the estuary is permitted. This prohibition includes any discharge from processing facilities.

12) TREE AND VEGETATION REMOVAL

a) The Permittee may not remove tree(s) or vegetation unless expressly approved in writing by the Permitter. The Permittee shall provide specific plans to the Permitter for desired tree(s) and vegetation removal during the annual meeting or in writing during the Term of this Permit.

b) Removal of non-native invasive vegetation such as non-native thistles, trimming and vegetation removal around structures is permissible.

13) WILDLIFE PROTECTION

a) Wildlife is an integral part of Point Reyes National Seashore and must be managed in accordance with all Applicable Laws, including but not limited to NPS laws, regulations, and policies.

b) Permittee shall not engage in any activity that purposely causes harm or destroys any wildlife. Conversely, Permittee shall not engage in any activity that purposely supports or increases populations of non-native or invasive animal species, except for the cultivation of the shellfish species authorized by this Permit.

~~c)As set forth in Section 3(j) of this Permit, Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites.~~

~~d)~~c)On a case by case basis, the Permitter will evaluate incidences of depredation caused by Permittee and choose a course of action. The nature of the course of action will be determined by the extent and frequency of the damage, the wildlife species, and park-wide management objectives.

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14) HAZARDOUS MATERIALS; ENVIRONMENTAL HEALTH AND SAFETY

a) In connection with this Permit, Permittee, its officers, agents, employees and contractors, shall not use, generate, sell, treat, keep, or store any Hazardous Materials on, about, under or into the Premises or elsewhere in Point Reyes except in compliance with all Applicable Laws and as approved in writing by Permitter. However, Permittee shall not be obligated to obtain Permitter's approval to use, keep, or generate Hazardous Materials as necessary for the normal operation or maintenance of vehicles or for standard household cleaners. Permittee agrees to be responsible for timely acquisition of any permit(s) required for its Hazardous Materials-related activities, and shall provide to the Permitter, upon request, inventories of all such Hazardous Materials and any supporting documentation, including but not limited to material safety data sheets, uniform waste manifest forms, and/or any other pertinent permits.

b) Permittee, its officers, agents, employees and contractors, shall not release, discharge or dispose of any Hazardous Materials from, on, about, under or into the Premises or elsewhere in Point Reyes, except as

authorized by Applicable Laws.

c) If Permittee knows of or reasonably suspects or receives notice or other communication concerning any past, ongoing, or potential violation of Environmental Requirements in connection with the Premises or Permittee's activities, Permittee shall immediately inform Permitter and shall provide copies of any relevant documents to Permitter. Receipt of such information and documentation shall not be deemed to create any obligation on the part of the Permitter to defend or otherwise respond to any such notification.

d) If any Hazardous Materials Occurrence is caused by, arises from, or is exacerbated by the activities authorized under this Permit or by the use of the Premises by Permittee, its officers, agents, employees or contractors, Permittee shall promptly take all actions at its sole cost and expense as are required to comply with Applicable Laws and to allow the Premises and any other affected property to be used free of any use restriction that could be imposed under Applicable Laws; provided that, except in cases of emergency, Permitter's approval of such actions shall first be obtained.

e) The Permitter shall have the right, but not the duty, at all reasonable times and, except in the case of emergency, following at least twenty-four (24) hours advance notice to Permittee, to enter and to permit any Agency, public or private utilities and other entities and persons to enter upon the Premises, as may be necessary as determined by the Permitter in its sole discretion, to conduct inspections of the Premises, including invasive tests, to determine whether Permittee is complying with all Applicable Laws and to investigate the existence of any Hazardous Materials in, on or under the Premises. The Permitter shall have the right, but not the duty, to retain independent professional consultants to enter the Premises to conduct such inspections and to review any final report prepared by or for Permittee concerning such compliance. Upon Permittee's request, the Permitter will make available to Permittee copies of all final reports and written data obtained by the Permitter from such tests and investigations. Permittee shall have no claim for any injury or inconvenience to or interference with Permittee's use of the Premises or any other loss occasioned by inspections under this Section 14(e). Notwithstanding the foregoing, neither Permittee nor Permitter shall be required to provide a report under this Section 14(e) if such report is protected by attorney-client privilege.

f) Should Permittee, its officers, agents, employees or contractors, fail to perform or observe any of the obligations or agreements pertaining to Hazardous Materials or Environmental Requirements for a period of thirty (30) days (or such longer period of time as is reasonably required) after notice, then Permitter shall have the right, but not the duty, without limitation of any other rights of Permitter under this Permit, personally or through its agents, consultants or contractors to enter the Premises and perform the same. Permittee agrees to reimburse Permitter for the costs thereof and to indemnify Permitter as provided for in this Permit.

g) Permittee understands and acknowledges that the Premises may contain asbestos and lead-based paint. If Permittee performs any Improvements or Alterations, Permittee shall comply with all Environmental Requirements related to asbestos and lead-based paint and shall solely bear all costs associated therewith. Nothing in this Permit shall be construed to require Permittee to remove asbestos or lead-based paint unless Environmental Requirements require such removal.

h) Permittee shall indemnify, defend, save and hold Permitter, its employees, successors, agents and assigns, harmless from and against, and reimburse Permitter for, any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments, and expenses, including without limitation, consultant fees and expert fees, that arise during or after the Term as a result of any violation of any Environmental Requirement in connection with this Permit or any Hazardous Materials Occurrence in connection with this Permit.

i) The provisions of this Article 14 shall survive any termination or revocation of this Permit. Article 15 (Insurance) of this Permit shall not limit in any way Permittee's or Permitter's obligations under this Article 14.

15) <u>INSURANCE</u>

a) Permittee shall purchase the types and amounts of insurance described herein before the Commencement Date of this Permit unless otherwise specified. At the time such insurance coverage is purchased, Permittee shall

provide Permitter with a statement of Permittee insurance describing the insurance coverage in effect and a Certificate of Insurance covering each policy in effect as evidence of compliance with this Permit. Permittee shall also provide the Permitter thirty (30) days advance written notice of any material change in the Permittee's insurance program hereunder. Permitter shall not be responsible for any omissions or inadequacies in insurance coverage or amounts in the event such coverage or amounts prove to be inadequate or otherwise insufficient for any reason whatsoever.

b) From time to time, as conditions in the insurance industry warrant, the Permitter reserves the right to revise the minimum insurance limits required in this Permit.

c) All insurance policies required by this Permit shall specify that the insurance company shall have no right of subrogation against the United States, except for claims arising solely from the negligence of the United States or its employees, or shall provide that the United States is named as an additional insured.

d) All insurance policies required herein shall contain a loss payable clause approved by the Permitter which requires insurance proceeds to be paid directly to the Permittee without requiring endorsement by the United States. Insurance proceeds covering any loss of the Premises but not used to replace such losses shall be promptly paid by Permittee to Permitter. The use of insurance proceeds for the repair, restoration or replacement of the Premises shall not give any ownership interest therein to Permittee.

e) Property Insurance: At a minimum, the Permittee shall be required to purchase Basic Form Actual Cash Value (replacement cost less depreciation) insurance coverage for all residence on the Premises. Within thirty days of issuance of the Permit, the Permittee shall submit a report from a reputable insurance company which provides a full range of options for insurance coverage on all nonresidential structures on the Premises. Within thirty days of receipt of this report, the Permitter, in its sole discretion, will review and specify the type and level of insurance coverage which shall be required. The Permitter will provide the Permittee written notification of insurance requirements and the Permittee shall be required to have the specified level(s) of insurance in place within thirty days of such notification. The cost of the insurance will be deducted from the appraised fair market value for the Premises; this adjustment and the insurance requirements will be addressed in an amendment to the Permit. Permittee shall, in the event of damage or destruction in whole or in part to the Premises, use all proceeds from the above described insurance policies to repair, restore, replace or remove those buildings, structures, equipment, furnishings, betterments or improvements determined by the Permitter, in Permitter's sole discretion, to be necessary to satisfactorily discharge the Permittee's obligations under this Permit.

f) Public Liability: The Permittee shall provide Comprehensive General Liability insurance against claims arising from or associated with Permittee's use and occupancy of the Premises. Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such use and occupancy, but in any event, the limits of such insurance shall not be less than $1,000,000.00 per occurrence covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, the Permittee shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a Comprehensive General Liability Policy, may be used to achieve the required limits.

g) Permittee shall also obtain the following additional coverage:

   i) Automobile Liability – To cover all owned, non-owned, and hired vehicles in the amount of $300,000.00.

   ii) Workers' Compensation – The amount shall be in accordance with that which is required by the State of California.

16) <u>INDEMNITY</u>

a) In addition to the indemnification contained in Article 14, Permittee shall indemnify, defend, save and hold Permitter, its employees, successors, agents and assigns, harmless from and against, and reimburse Permitter for, any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments and expenses and the like incurred in connection with or arising in any way out of this Permit; the use or occupancy of the Premises by Permittee or its officers, agents, employees, or contractors; the design,

construction, maintenance, or condition of any Improvements or Alterations; or any accident or occurrence on the Premises or elsewhere arising out of the use or occupancy of the Premises by Permittee or its officers, agents, employees, or contractors. Permittee's obligations hereunder shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably approved by Permitter), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against the United States.

b) Permitter agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States by third parties for personal injuries or property damage resulting from the negligent act or omission of any employee of the United States in the course of his or her employment.

c) This Article 16 shall survive any termination or revocation of this Permit. The provisions of Article 15 (Insurance) of this Permit shall not limit in any way Permittee's obligations under this Article 16.

17) PROPERTY INTEREST

a) This Permit shall vest in Permittee no property interest in the Premises or in the improvements thereon. Title to real property and improvements thereon, including any Improvements or Alterations constructed by Permittee, shall be and remain solely in Permitter. Except as provided in Paragraph 3(g), Permittee shall have no claim for any compensation or damages for the Premises, the improvements thereon, or any Improvements or Alterations constructed by the Permittee.

b) Nothing in this Permit shall give or be deemed to give Permittee an independent right to grant easements or other rights-of-way over, under, on, or through the Premises.

c) Permitter hereby retains the sole and exclusive right to oil, gas, hydrocarbons, and other minerals (of whatsoever character) in, on, or under the Premises.

18) RENTS, TAXES AND ASSESSMENTS

a) The annual rental rate for this Permit shall be established by Permitter and is set forth on the Cover Page of this Permit.

b) The annual rent under this Permit is payable in advance on a semi-annual basis. Therefore, Permittee hereby agrees to pay fifty percent of the annual rate on or before November with the remaining fifty percent payable on or before May of each year during the Term.

c) Permittee shall pay the proper Agency, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time during the Term of this Permit, are levied or assessed against the Premises.

d) Rents due hereunder shall be paid without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment or reduction.

19) CYCLIC MAINTENANCE

a) Permittee shall perform all Cyclic Maintenance in accordance with the Provisions of this Permit and at Permittee's sole cost and expense. Permittee is responsible for the maintenance of all fences, buildings, and other improvements upon the Premises. All improvements and facilities used and occupied by Permittee shall at all times be protected and maintained in a safe, sanitary and sightly condition.

b) Specific maintenance requirements may be negotiated with Permittee each year as outlined in Article 21 (Annual Meeting).

c) Docks and Fences shall be maintained in good condition and shall be timely repaired in conformance with

Applicable Laws. Abandoned fences and other decrepit improvements shall be removed from the Premises and shall be disposed of outside the Park or as directed by Permitter after review and approval by the NPS Historian.

d) New lighting under Permittee's control of the Premises shall be redesigned to protect and preserve the night sky/darkness and minimize light pollution in Drakes Estero.

e) Parking areas shall be maintained in a safe condition and no new roads or truck trails shall be established without prior written permission of the Permitter. The main entrance road from Sir Francis Drake Boulevard to the SUP Area will be maintained by the NPS. The Park will respond in a timely manner to Permittee and/or visitor complaints regarding the condition of the main entrance road. Notwithstanding the foregoing, Permitter may enter into a road maintenance contract with Permittee.

f) Existing water reservoirs shall be maintained in a safe and secure condition to prevent washouts and erosion and no new reservoirs shall be constructed or established without prior written approval of the Permitter.

g) Permittee shall maintain the water, well, pump and all pipelines within the Premises. Permittee shall replace or repair any damage or loss of the water system within the Premises.

h) Permittee shall maintain the sewage pipeline and sewage leachfield in the "Sewage Area."

i) Permittee shall be responsible for removing slash buildup around fences or other facilities within the Premises so as to prevent fire and egress hazards. Permittee shall also be responsible for removing litter and trash from the Premises.

20) COMPLIANCE WITH APPLICABLE LAWS; NEPA, NHPA

a) General Compliance: As provided for in this Permit, Permittee at its sole cost and expense shall promptly comply with all Applicable Laws as required by law. Permittee shall immediately notify Permitter of any notices received by or on behalf of Permittee regarding any alleged or actual violation(s) of or non-compliance with Applicable Laws. Permittee shall, at its sole cost and expense, promptly remediate or correct any violation(s) of Applicable Laws.

b) National Environmental Policy Act and National Historic Preservation Act: Where activities undertaken by Permittee relate to the preparation of compliance documents pursuant to the National Environmental Policy Act ("NEPA") or the National Historic Preservation Act ("NHPA"), Permittee shall supply all necessary information to Permitter and any Agency in a timely manner. Permitter will pay for the preparation of NEPA or NHPA documents. If there is litigation regarding NEPA or NHPA compliance, it will not trigger the indemnification requirements of Article 16.

21) ANNUAL MEETING

a) The Parties shall meet annually each year during the Term of this Permit for the purposes of discussing and resolving issues of mutual concern and ensuring that Permittee is complying with the Provisions of this Permit.

22) PENALTY

a) At the option of the Permitter, Permitter may, in lieu of voiding and terminating this Permit, assess a penalty of $50.00 per day for any failure by Permittee to keep and perform any of the Provisions of this Permit. In such case, Permittee shall be given notice in writing of a grace period (of from one to thirty days) to remedy the situation before a penalty will be assessed. Payment of any penalty under this provision shall not excuse Permittee from curing the Default. This provision shall not be construed as preventing Permitter from issuing citations or initiating enforcement proceedings under Applicable Laws.

23) SURRENDER AND VACATE THE PREMISES, RESTORATION

a) At the conclusion of Permittee's authorization to use the Premises for the Permitted Uses, Permittee shall surrender and vacate the Premises, remove Permittee's Personal Property therefrom, and repair any damage resulting from such removal. Subject to the approval of the Permitter, Permittee shall also return the Premises to as good order and condition (subject to ordinary wear and tear and damage that is not caused directly or indirectly by Permittee) as that existing upon the Effective Date.

b) All Permittee's Personal Property shall remain the property of Permittee. However, if after the conclusion of Permittee's authorization to use the Premises for the Permitted Uses, Permittee shall fail satisfactorily to remove Permittee's Personal Property and so repair the Premises, then, at the Permitter's sole option, after notice to Permittee, Permittee's Personal Property, shall either become the property of the Permitter without compensation therefore, or the Permitter may cause it to be removed and the Premises to be repaired at the expense of Permittee, and no claim for damages against Permitter, its employees, agents or contractors shall be created or made on account of such removal or repair work.

24) LIMITATION ON EFFECT OF APPROVALS

a) All rights of Permitter to review, comment upon, approve, inspect or take any other action with respect to the use and occupancy of the Premises by Permittee, or any other matter, are expressly for the benefit of Permitter and no other party. No review, comment, approval or inspection, right or exercise of any right to perform Permitter's obligations, or similar action required or permitted by, of, or to Permitter under this Permit, or actions or omissions of Permitter's employees, contractors, or other agents, or other circumstances shall give or be deemed to give Permitter any liability, responsibility or obligation for, in connection with, or with respect to the operation of the Premises, nor shall any such approval, actions, information or circumstances relieve or be deemed to relieve Permittee of its obligations and responsibilities for the use and occupancy of the Premises as set forth in this Permit.

25) WAIVER NOT CONTINUING

a) The waiver of any Default, whether such waiver be expressed or implied, shall not be construed as a continuing waiver, or a wavier of or consent to any subsequent or prior breach of the same or any other provision of this Permit. No waiver of any Default shall affect or alter this Permit, but each and every Provision of this Permit shall continue in full force and effect with respect to any other then existing or subsequent Default.

26) LIENS

a) Permittee shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion, fee interest or other estate of the Permitter or of any interest of the Permitter in the Premises. If any such lien shall at anytime be filed against the Premises or any portion thereof, Permittee shall cause the Permitter to be discharged from the lien.

27) HOLDING OVER

a) This Permit shall terminate upon the Termination Date and any holding over by Permittee after the Termination Date shall not constitute a renewal of this Permit or give Permittee any rights under this Permit or in or to the Premises.

28) NOTICES

a) Any notice or other communication required or permitted under this Permit shall be in writing and shall be delivered by hand or certified mail with return receipt requested. Notices and other communications shall be addressed as follows:

If to Permitter:

Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

If to Permittee:

Mr. Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

29) NO PARTNERSHIP OR JOINT VENTURE

a) Permitter is not for any purpose a partner or joint venturer of Permittee in the development or operation of the Premises or in any business conducted on the Premises. Permitter shall not under any circumstances be responsible or obligated for any losses or liabilities of Permittee.

30) ANTI-DEFICIENCY ACT

a) Permittee and Permitter agree that nothing contained in this Permit shall be construed as binding Permitter to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the subject matter of this Permit, or to involve Permitter in any contract or other obligation for the future expenditure of money in excess of such appropriations.

31) COMPLIANCE WITH EQUAL OPPORTUNITY LAWS

a) Permittee agrees that in undertaking all activities pursuant to this Permit, Permittee will comply with all Applicable Laws relating to non-discrimination.

32) ENTIRE AGREEMENT AND AMENDMENT

a) This instrument, together with the exhibits hereto, all of which are incorporated in this Permit by reference, constitutes the entire agreement between Permitter and Permittee with respect to the subject matter of this Permit and supersedes all prior offers, negotiations, oral and written. This Permit may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Permitter and Permittee.

33) NO PAYMENTS BY PERMITTER

a) Under no circumstances or conditions, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall Permitter be expected or required to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability except as expressly set forth in this Permit.

34) NO THIRD PARTY BENEFICIARIES

a) Except as expressly set forth in this Permit, this Permit shall not be deemed to confer upon any person or entity, other than the parties to this Permit as expressly set forth in this Permit, any third party beneficiary status, any right to enforce any Provision of this Permit, or any other right or interest.

35) NO PREFERENTIAL RENEWAL AND RELOCATION ASSISTANCE

a) Permittee hereby agrees that Permittee is not a concessioner and that the provisions of law regarding National Park Service concessionaires do not apply to Permittee. No rights shall be acquired by virtue of this Permit entitling Permittee to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition

Policies Act of 1970, Public Law 91-646.

36) SEVERABILITY

a) In case any one or more of the provisions of this Permit shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Permit, and this Permit shall be construed as if such invalid, illegal or unenforceable provisions had not been contained in this Permit.

37) EXHIBITS

a) Each of the exhibits referenced in this Permit is attached hereto and incorporated herein.

38) TIME OF THE ESSENCE

a) Time is hereby expressly declared to be of the essence of this Permit and of each and every Provision of this Permit.

39) HEADINGS

a) Article, Section and Subsection headings in this Permit are for convenience only and are not to be construed as a part of this Permit or in any way limiting or amplifying the Provisions of this Permit.

40) PERMIT CONSTRUED AS A WHOLE

a) The language in all parts of this Permit shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Permitter or Permittee. The Parties acknowledge that each party and its counsel have reviewed this Permit and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed or applied in the interpretation of this Permit.

41) MEANING OF TERMS

a) Whenever the context so requires, the neuter gender shall include the masculine and the feminine, and the singular shall include the plural and vice versa.

42) FEDERAL LAW

a) The laws of the United States shall govern the validity, construction and effect of this Permit.

EXHIBIT A

Map – Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area

EXHIBIT B

Map – Drake's Estero Oysters – SUP & ROP

EXHIBIT C

Drakes Estero Aquaculture and Harbor Seal Protection Protocol

EXHIBIT D

Map – Drakes Bay Oyster Company Well Area

EXHIBIT E

Map – Drakes Bay Oyster Company Sewage Area

United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807

JAN 15 2008

IN REPLY REFER TO:

A7221 (PWR-RD)

JAN 14 2008

Kevin and Nancy Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake Blvd
Inverness, CA 94937

Dear Mr. and Mrs. Lunny:

Thank you for your long and detailed letter of December 31, 2007 regarding the Drakes Bay Oyster Company. This issue has been dominating all of our time and in keeping with our mutual discussion with Senator Feinstein on Monday, January 7, I think it is in all of our interests that we try to bring it to a mutually agreeable solution as soon as possible. You have a legitimate business to run and I have the public trust responsibility to operate a unit of the National Park System. I do not think long detailed, point by point responses are productive, but rather a focus on the three key issues as follows:

1. The Science: Our scientists and those employed by the California Coastal Commission agree that there are negative effects on the environment from oyster farming in Drakes Estero. You and your associates, such as Dr. Goodman, disagree with that assessment. In order to resolve those disagreements, the National Park Service is prepared to contract with the National Research Council (NRC) to produce two reports, one specific to Drakes Estero as a "case study" and the other to look more broadly at the ecological effects of mariculture. It is my understanding that you, and Dr. Goodman have concurred with the NRC on the scope of this review. I suggest that we all, including the California Department of Fish and Game, actively participate in this review and trust the highest scientific body in the US to give us their objective analysis.

2. The allegations of scientific validity in the report "Drakes Estero, A Sheltered Wilderness": Allegations are just that, not proof of anything, and we await independent confirmation or dismissal. This is being thoroughly investigated by the Department of the Interior's Office of the Inspector General.

3. The Special Use Permit: DBOC is currently operating a commercial business within a unit of the National Park System without any permit. Our regulations require that any

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special use permit to carry out any activity in a unit of the National Park System to have specific provisions to protect the environment. You are not being singled out in any way. You need the NPS Special Use Permit to be in compliance with the California Coastal Commission. As discussed with the Senator, we have structured the permit to be nearly identical to the dairy permits in the insurance and other "boiler plate" provisions. These should be very familiar to you. We have offered the permit until 2012, when the Reservation of Use and Occupancy expires and stated that we would only reopen the environmental provisions based on NEPA and the results of the NRC review of the science. That offer gives you full assurance you can fully operate until 2012, without having to come back for another permit. As for the environmental provisions, they are nearly identical to those required by the California Coastal Commission's Consent Cease and Desist Order, which you signed in December of 2007 (see attachment). At your request, we have incorporated the Consent Order Harbor seal map as the basis for operational protocol. These provisions are designed so that you can conduct your business and the natural resources of Drakes Estero are protected. That is our public responsibility and consistent with the commitment we made at the meeting in Olema.

Kevin, you have stated many times that you would like to go back to a former time, when the relations with the NPS were cordial. I agree. Unfortunately, this issue now involves attorneys, reporters, DC lobbyists, environmental and agriculture constituency groups, elected officials, scientists, investigators, state regulators and now the highest scientific body in the United States. Each of them has interests that will not always lead to a mutual resolution and a re-establishment of a working relationship on the ground at Point Reyes National Seashore. The best way we can bring back that relationship back is for you to negotiate in good faith. We have attached a permit that meets all the points we discussed with the Senator and it is my hope you will sign it. With your signature, we can move this back to an on-going operation and collaborative relationship.

I look forward to meeting with you later this month.

Jonathan B. Jarvis

Jonathan B. Jarvis

CONSENT ORDER NO. CCC-07-CD-04
(DRAKE'S BAY OYSTER COMPANY)

1.0 General

Pursuant to its authority under Public Resource Code §30810,[1] the California Coastal Commission ("Commission") hereby orders and authorizes Drake's Bay Oyster Farm, run by Drake's Bay Oyster Company (hereinafter referred to as "Respondent"), its employees, agents, contractors, and anyone acting in concert with any of the foregoing, and successors in interest and future owners/operators of the business or lessees to comply with the terms and conditions of this Consent Cease and Desist Order (hereinafter referred to as "Consent Order"). Respondent agrees to undertake the following, pursuant to this Consent Order and in the interest of resolving and settling this matter:

2.0 Further Unpermitted Development

Respondent agrees to cease and desist from performing any new development, as the term "development" is defined in Coastal Act §30106, on the property, which is defined in Provision 10.0 of this Consent Order, and from expanding or altering the current development that exists on the property. Nothing in this Consent Order prohibits the Respondent from continuing current operational activities, provided that all protective measures set forth in Provision 3.0 of this Consent Order are implemented as required and that the current activities are not expanded.

3.0 Resource Protection Measures

Respondent agrees to implement the following measures to minimize potential resource impacts to onshore and offshore areas caused by the operation of the facility. Nothing in this Consent Order shall be construed to authorize the corresponding development or the operations.

3.1 Onshore Conditions

3.1.1 Additional Structures. Construction and/or placement of any additional onshore structures are prohibited until Respondent obtains a coastal development permit. Nothing in this Consent Order precludes Respondent from seeking a waiver for de minimis development, as set forth in Coastal Act §30624.7, or from seeking a CDP for development on the property.

[1] The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

3.1.2 **Water Quality/Hazardous Waste.** Within 60 days of the issuance of this Consent Order, Respondent shall submit a hazardous materials/discharge management plan which: 1) identifies and outlines procedures for the removal or replacement of any receptacle for oil, paint, or other hazardous materials that is leaking or could leak in the near future; 2) identifies current and potential polluted discharges and outlines protocols for addressing the discharges; 3) provides a contingency plan for potential leaks; 4) states that Respondent shall take all necessary measures to prevent leaks or spills; and 5) states that all adequate or new receptacles shall be moved at least 100 feet from sensitive areas, or to paved areas or inside structures, securely stored, and properly labeled. If the information required under this provision has been provided to a county or state agency in order to comply with that agency's regulations or requirements, the information supplied to that agency may be submitted in lieu of the hazardous materials/discharge management plan.

3.1.3 **Thermal Discharges and Seawater Use.** Elevated temperature waste discharges shall comply with limitations necessary to ensure protection of marine resources and biological productivity. The maximum temperature of waste discharges, as measured from the point of discharge of the "incubation area", shall not exceed the maximum temperature of the receiving waters by more than 20 degrees F. In addition, all seawater intake structures shall be designed to ensure that maximum through-screen intake velocity does not exceed 0.5 feet per second. Measures shall be adopted to minimize the facility's intake and use of seawater, including the use of a seawater collection and re-circulation system in the grow-out room.

3.2 Offshore Conditions

3.2.1 **Additional Structures.** Construction and/or placement of any additional offshore aquaculture racks/cultivation infrastructure is prohibited until Respondent obtains a coastal development permit.

3.2.2 **Future Abandonment and Removal of Equipment.** To prevent the degradation of oyster cultivation apparatus and the release of debris into Drake's Estero, within 30 days of the cessation of harvesting on any plot that is being temporarily taken out of production, Respondent shall remove oyster culture apparatus from that plot except for permanent structures including oyster racks located within certified harvest areas. Notwithstanding the foregoing, Respondent may resume harvesting on any plot temporarily taken out of production. Within 30 days of the cessation of harvesting on any plot that is being permanently taken out of production, Respondents shall remove all oyster cultivation apparatus from that plot, including permanent structures such as oyster racks, stakes, and pallets.

3.2.3 **Removal of Abandoned Equipment.** All currently abandoned materials including cultivation equipment/apparatus, including those stakes and racks not currently and actively being used to produce shellfish, except those plots that are identified for repair, shall be removed. Within 90 days of the issuance of this order, Respondent shall submit a Debris Removal Plan to the National Park Service and Executive Director of the Coastal Commission for approval. The plan shall include location of debris identified for removal, proposed techniques and equipment to be used for debris removal, and identification of the debris disposal facility. Within 60 days of approval by the Executive Director and National Park Service of the Debris Removal Plan, Respondents shall remove all debris as approved in the Debris Removal Plan. Within 30 days of completing debris removal, Respondent shall submit to the Executive Director and National Park Service a final report detailing the material that was removed, the locations from which this material was removed, the techniques and equipment used, and the location of the disposal facility.

3.2.4 **Invasive Species.** To minimize the chances of introducing invasive species or pathological microorganisms to Drake's Estero, Respondent will only import shellfish in the form of larvae and seed. Within 30 days of the issuance of this Consent Order, Respondent shall produce sufficient evidence, for the review and approval of the Executive Director, that larvae and seed from outside sources have been certified by California Department of Fish and Game to be free of pathogens. If the Executive Director determines that the evidence is insufficient, Respondent shall cease from importing larvae within 30 days of receiving notification of the determination from the Executive Director.

3.2.5 **Boat Transit.** Boat traffic shall be limited to established channels that do not violate the protective measures set forth in this Consent Order. In situations where visibility is poor, Respondent will make every effort to use only the established channels. Within 60 days of the issuance of this order, Respondent shall submit to the National Park Service and the Executive Director a Vessel Transit Plan for review and approval. This plan shall include proposed access lanes (distinguishing between commonly-used channels and channels only used when certain racks/bags are active) and mooring areas for maintenance and harvesting of oysters, clams, and scallops. Once approved, only the vessel lanes and mooring areas described and mapped in the Vessel Transit Plan shall be used by Respondent and Respondent's employees.

3.2.6 **Harbor Seal Protection Areas.** All of Respondent's boats, personnel, and any structures and materials owned or used by Respondent shall be prohibited from the harbor seal protection areas defined on the map, which is attached to this Consent Order as Figure 1. Within 60 days of issuance of this Consent Order, Respondents shall submit a plan outlining the removal of all equipment and materials located in these areas. Within 60

days of the approval of this plan by the Executive Director, Respondents shall implement the plan as approved. In addition all of Respondent's boats and personnel shall be prohibited from coming within 100 yards of hauled out harbor seals.

3.2.7 **Pacific Oyster and European Flat Oyster.** Cultivation of Pacific oyster (*Crassostrea gigas*) and European flat oyster (*Ostrea edulis*) shall only occur in the "cultivation area" defined in Provision 3.2.11 of this Consent Order. Cultivation of additional oyster species within this area shall not be allowed and cultivation of these oyster species outside of this lease area shall also not be allowed. Within 60 days of the issuance of this Consent Order, Respondent shall submit a plan outlining the removal of all shellfish and equipment from prohibited areas, as defined in this provision, and setting forth protocols for cultivation of allowable species and prevention of intrusion by prohibited species in the areas defined in this provision. Within 30 days of the approval of this plan by the Executive Director, Respondent shall implement the plan as approved.

3.2.8 **Non-Oyster Species Areas.** Cultivation of manila clams (*Venerupis phillipinarum* formerly *Tapes japonica*) and purple-hinged rock scallops (*Crassodoma gigantean* formerly *Hinnities multirugosus*) shall only occur where currently cultivated in the "cultivation area" defined in Provision 3.2.11 of this Consent Order. Cultivation of additional non-oyster species shall not be allowed. Within 60 days of the issuance of this Consent Order, Respondent shall submit a plan outlining the removal of all clams, scallops or any unpermitted species and any associated cultivation equipment located outside of the cultivation area. Within 30 days of the approval of this plan by the Executive Director, Respondent shall implement the plan as approved.

3.2.9 **Use of Bottom Bags.** Bottom bags shall only be placed in intertidal areas devoid of eelgrass. No eelgrass shall be removed to create additional areas for bottom bags. Within 60 days of the issuance of this Consent Order, Respondent shall submit protocols for the location and practices regarding the use of bottom bags according to this provision and the terms and conditions of this Consent Order.

3.2.10 **Maximum Annual Production Limit.** Within 60 days of the issuance of this Consent Order, Respondents shall provide documentation showing the "current production level," including the amount harvested in the last year and any projected increases in yield for the coming year. Production of all shellfish species shall be capped at this "current production level."

3.2.11 **Cultivation Area.** All cultivation shall be confined to areas which are: 1) currently included in the California Department of Fish and Game lease numbers M438-01 and M438-02; 2) consistent with the California Department of Health, the Food and Drug Administration, and the

National Shellfish Sanitation Program approved shellfish harvest areas within Drakes Estero; and 3) specified as oyster beds or primary water quality sites on the map attached to this Consent Order as Figure 1.

4.0 Plan Revisions

If the Executive Director determines that any immaterial modifications or additions to the plans submitted under Provision 3.0 of this Consent Order are necessary, he shall notify Respondent. Respondent shall complete the requested modifications and resubmit the plan(s) for approval within 10 days of the notification.

5.0 Completion of Coastal Development Permit (CDP) Application

5.1 Within 60 days from the issuance date of this Consent Order or within such additional time as the Executive Director may grant for good cause, pursuant to Section 18.0 of this Consent Order, Respondent shall revise the project description in Coastal Development Permit (CDP) application No. 2-06-003 to include all unpermitted onshore and offshore development, as that term is defined and addressed in the Coastal Act and Commission's regulations (California Code of Regulations (CCR), Title 14, Division 5.5), subject to Respondent's reservation of rights, positions and defenses as specified in Provision 13.0.

5.2 Within 120 days from the date of issuance of a National Park Service Special Use Permit for the operations on the property, or within such additional time as the Executive Director may grant for good cause, Respondent shall submit all materials which are required to complete CDP application No. 2-06-003, to:

California Coastal Commission
Energy, Ocean Resources, and Federal Consistency Division
Attn: Cassidy Teufel
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

The application shall address all existing development, as that term is defined and addressed in the Coastal Act and Commission's regulations (Title 14 of the California Code of Regulations), that is unpermitted, including but not limited to the development identified in Provision 11.0, on the property identified in Provision 10.0, subject to Respondent's reservation of rights, positions and defenses as specified in Provision 13.0. If Respondent believes that one or more items of development listed in Provision 11.0 do not exist on the property, Respondent shall submit evidence supporting the claim(s) to the Executive Director. If the Executive Director determines that the claim is valid, this Consent Order shall not apply to that portion of cited development.

5.3 Respondent shall not withdraw the application submitted under Provision 5.1 and shall allow the application to proceed through the Commission permitting process

Form 10-114
Rev. Jan. 00

UNITED STATES DEPARTMENT OF THE INTERIOR
National Park Service

Special Use Permit

Name of Use: Aquaculture

Date Permit Reviewed 2007
Reviewed 20
Reviewed 20
Expires November 30, 2012

Permit # MISC-8530-6000-8002
Type Park Code No. #

Long Term X
Short Term

Point Reyes National Seashore
Name of Area

Drakes Bay Oyster Company
17171 Sir Francis Drake Blvd.
Inverness, CA 94937
(415) 669-1149

is hereby authorized for a period ("Term") commencing on _____, 2007 ("Commencement Date") and terminating on November 30, 2012 ("Expiration Date") to use the following described land, improvements, and waters in the following area:

the lands and improvements at Drakes Bay Estero at the former Johnson's Oyster Site consisting of approximately 1.1 acres of land and improvements designated as the "SUP Area" on the map attached hereto as Exhibit B ("Drake's Estero Oysters – SUP & ROP"); the waters designated as the "SUP Area" on the map attached hereto as Exhibit A ("Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area"); the land designated as the "Well Area" on the map attached hereto as Exhibit D ("Drakes Bay Oyster Company Well Area"); and the land designated as the "Sewage Area" on the map attached hereto as Exhibit E ("Drakes Bay Oyster Company Sewage Area"). Collectively, the areas so designated shall be referred to as the "Premises." The Premises governed by this Permit do not include the area designated as the ROP Area on the map attached hereto as Exhibit B.

For the purpose(s) of:

Use of the area designated as the "SUP Area" on the map attached hereto as Exhibit B for the purpose of processing shellfish, the interpretation of shellfish cultivation to the visiting public, and residential purposes reasonably incidental thereto. Use of the area designated as the "SUP Area" on the map attached hereto as Exhibit A for the purpose of shellfish cultivation. Use of the area designated as the "Well Area" on the map attached hereto as Exhibit D for the purpose of supplying water for the Drakes Bay Oyster Company facilities using Permittee well, pump, and pipelines. Use of the area designated as the "Sewage Area" on the map attached hereto as Exhibit E for the purpose of use and maintenance of existing sewage pipeline and sewage leachfield to service the Drakes Bay Oyster Company facilities. Collectively, the uses set forth in this paragraph shall be referred to as the "Permitted Uses."

Authorizing legislation or other authority (RE – DO-53): 16 U.S.C. 1, 1a-1, 3 & 459c; the Reservation of Use and Occupancy.

NEPA & NHPA Compliance: NEPA compliance pending

PERFORMANCE BOND:	Required	Not Required X	Amount:
LIABILITY INSURANCE:	Required X	Not Required	Amount: As set forth in Article 15 of this Permit.

ISSUANCE of this Permit is subject to the terms, covenants, obligations, and reservations, expressed or implied herein and to the payment to the U.S. Dept. of the Interior, National Park Service of the sum of **$2,800.00** per year, plus an amount to be determined by appraisal for the use of the Sewage Area and the Well Area including water use.

PERMITTEE:_____
Signature Organization Date

Authorizing Official: _____ George Turnbull _____

Signature | Deputy Regional Director | Date

Additional Authorizing Official: _____
(If Required)

Signature | Title | Date

CONDITIONS OF THIS PERMIT

1) DEFINITIONS

As used in this Permit, the following terms shall have the following meanings:

a) "Agency" means any agency, department, commission, board, bureau, office or other governmental authority having jurisdiction.

b) "Applicable Laws" includes, without limitation all present and future statutes, regulations, requirements, Environmental Requirements, guidelines, judgments, or orders of any Agency or judicial body, whether now existing or hereafter established, relating to or affecting the Premises or the use or occupancy of the Premises.

c) "Commencement Date" is as defined on the Cover Page of this Permit.

d) "Cyclic Maintenance" means (i) the performance by Permittee of all repairs, maintenance, or replacement-in-kind necessary to maintain the Premises and the existing improvements thereon in good order, condition, and repair; (ii) housekeeping and routine and periodic work scheduled to mitigate wear and deterioration without materially altering the appearance of the Premises; (iii) the repair or replacement-in-kind of broken or worn-out elements, parts or surfaces so as to maintain the existing appearance of the Premises; and (iv) scheduled inspections of all building systems on the Premises.

e) "Default" means Permittee's failure to keep and perform any of the Provisions of this Permit.

f) "Environmental Requirements" means, without limitation, all standards or requirements relating to the protection of human health or the environment such as:

a. standards or requirements pertaining to the reporting, permitting, management, monitoring, investigation or remediation of emissions, discharges, releases, or threatened emissions, releases or discharges of Hazardous Materials into the air, surface water, groundwater, or land;

b. standards or requirements relating to the manufacture, handling, treatment, storage, disposal, or transport of Hazardous Materials; and

c. standards or requirements pertaining to the health and safety of employees or the public.

g) "Expiration Date" is as defined on the Cover Page of this Permit.

h) "Hazardous Materials" means, without limitation, any material or substance, whether solid, liquid, or gaseous in nature,

a. the presence of which requires reporting, permitting, management, monitoring, investigation or remediation under any Environmental Requirement;

b. that is or becomes defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "pollutant," "discharge," "waste," "contaminant," or "toxic contaminant" under any Environmental Requirement, or any above-ground or underground storage containers for the foregoing;

c. that is toxic, explosive, corrosive, flammable, infectious, radioactive, reactive, carcinogenic, mutagenic, or otherwise hazardous to human health or the environment and is or becomes regulated under any Environmental Requirement;

d. that contains gasoline, diesel fuel or other petroleum hydrocarbons or derivatives or volatile organic compounds, or is an above-ground or underground storage container for same;

e. that contains polychlorinated biphenyls (PCBs), asbestos, asbestos-containing materials or urea formaldehyde foam insulation; or

f. that contains radon gas.

i) "Hazardous Materials Occurrence" means any use, generation, treatment, keeping, storage, transport, release, disposal, migration, or discharge of any Hazardous Materials from, on, under or into the Premises or Point Reyes National Seashore ("Point Reyes") that causes any environmental contamination.

j) "Improvements or Alterations" means any construction that does not fall within the definition of Cyclic Maintenance.

k) "NPS" means the management officials in charge of the administration and operation of Point Reyes, including the Superintendent or his/her designee(s).

l) "Park" means, without limitation, all lands, waters and structures within the legislative boundaries of the Point Reyes National Seashore, all natural and cultural resources within such boundaries, and any other property within such boundaries belonging to Point Reyes. As appropriate given the context, this term also includes the visiting public and/or Point Reyes employees.

m) "Permit" means this instrument which contains those certain termination and revocation provisions as provided for herein.

n) "Permitted Uses" is as defined on the Cover Page of this Permit.

o) "Personal Property" means all furniture, fixtures, equipment, appliances and apparatus placed on the Premises that neither are attached to nor form a part of the Premises. Personal Property also includes any trailers, modular units, and/or temporary structures owned by Permittee.

p) "Point Reyes" means Point Reyes National Seashore.

q) "Premises" is as defined on the Cover Page of this Permit.

r) "Provision" shall mean any term, agreement, covenant, condition or provision of this Permit or any combination of the foregoing.

s) "ROP" or "Reservation of Use and Occupancy" means the Reservation of Use and Occupancy purchased by the Permittee in 2005. In 1972 the United States of America purchased Johnson Oyster Company's property, subject to a Reservation of Use and Occupancy on approximately 1.5 of those acres for a period of forty (40) years. This Reservation of Use and Occupancy expires on November 30, 2012.

t) "SUP" means this Permit.

u) "Term" is as defined on the Cover Page of this Permit.

v) "Termination Date" means the Expiration Date or such earlier date as this Permit is terminated or revoked pursuant to any Provision of this Permit.

2) <u>GENERAL CONDITIONS</u>

a) The Permittee shall exercise this privilege subject to the supervision of the Superintendent, and shall comply with all Applicable Laws.

b) Permit and Approvals – Except as otherwise provided in this Permit, Permittee shall be responsible for obtaining, at its sole cost and expense, all necessary permits, approvals or other authorizations relating to Permittee's use and occupancy of the Premises.

c) Damages - The Permittee shall pay the United States for any damage resulting from this use which would not reasonably be inherent in the use which the Permittee is authorized to make of the land and areas described in this Permit.

d) Benefit - Neither Members of, nor Delegates to Congress, or Resident Commissioners shall be admitted to any share or part of this Permit or derive, either directly or indirectly any pecuniary benefits to arise therefrom: Provided, however, that nothing herein contained shall be construed to extend to any incorporated company if the Permit be for the benefit of such corporation.

e) Assignment and Subletting - This Permit may not be transferred or assigned without the consent of the Permitter, in writing. Permittee shall not sublet the Premises or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with this Permit without the prior written approval of the Permitter.

f) Revocation - This Permit may be terminated upon Default or at the discretion of the Permitter.

g) The Permittee is prohibited from giving false information; to do so will be considered a breach of conditions and be grounds for revocation [Re: 36 CFR 2.32(4)]

3) USE OF PREMISES

a) Permittee is authorized to use the Premises only for the Permitted Uses.

b) Permittee shall not engage in any activity that may be dangerous or harmful to persons, property, or the Park; that constitutes or results in waste or unreasonable annoyance (including, without limitation, signage and the use of loudspeakers or sound or light apparatus that could disturb park visitors and wildlife outside the Premises); that in any manner causes or results in a nuisance; or that is of a nature that it involves a substantial hazard, such as the manufacture or use of explosives, chemicals or products that may explode.

c) The Parties hereby acknowledge and agree that Permittee's covenant that the Premises shall be used as set forth in this Article 3 is material consideration for Permitter's agreement to enter into this Permit. The Parties further acknowledge and agree that any violation of said covenant shall constitute a Default under this Permit and that Permitter may inspect the premises at any time.

d) This Permit is subject to the right of the NPS to establish trails and other improvements and betterments over, upon, or through the Premises and further to the use by travelers and others of such established or existing roads and trails. The Permittee understands that occasional park visitors are authorized to walk, use non-motorized watercraft, or hike in the various areas included in this Permit even though no trails are formally established.

e) Permitter reserves the right for Permitter, its employees, contractors and agents to enter and to permit any Agency to enter upon the Premises for the purposes of inspection, inventory or when otherwise deemed appropriate by the Permitter for the protection of the interests of Permitter, including Permitter's interests in any natural or cultural resources located on, in or under the Premises.

f) Permitter reserves the right at any time to close to travel any of its lands, to erect and maintain gates at any point thereon, to regulate or prevent traffic of any kind thereon, to prescribe the methods of use thereof, and to maintain complete dominion over the same; provided, however, that at all times during the Term, Permitter shall provide Permittee and Permittee's invitees with reasonable access to the Premises subject only to interruptions caused by necessary maintenance or administrative operations or by matters beyond Permitter's control.

g) Permittee hereby waives any claim for damages for any injury, inconvenience to or interference with Permittee's use and occupancy of the Premises, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by Permitter's exercise of its rights under this Article 3 except to the extent that the damages, expenses, claims or suits result from the willful misconduct or gross negligence of Permitter, its employees, contractors or agents; provided, further, that Permitter shall be liable only to the extent such claims are allowed

under the Federal Tort Claims Act.

h) Members of the general public visiting the Drakes Bay Oyster Company operation may park in the adjacent NPS parking area and walk over to the SUP or ROP areas.

i) While Permittee is permitted to use and operate motorized watercraft in Drakes Estero for the purpose of conducting daily business operations, which can include occasional inspections required by Agencies, no other use of Permittee's motorized watercraft is authorized. No motorized watercraft may enter the designated wilderness boundary (See "Existing Wilderness" on map attached hereto as Exhibit A). To protect water quality in the Estero, any additional or replacement boat motors obtained by Permittee must be four stroke motors.

j) Due to a lack of adequate parking space and restroom facilities for the public, barbecuing is not permitted in the Special Use Permit Area. To comply with this paragraph, Permittee will not encourage barbecuing in the SUP Area. Picnic tables will be provided by the NPS at the adjacent parking area.

k) Unauthorized discharge into the estuary is prohibited. This prohibition includes any discharge from processing facilities. Notwithstanding the foregoing, discharge of oyster wash water from dock and from hatchery operations is allowed if authorized by relevant Agencies.

l) In order to ensure public health and safety, Permittee will ensure that Permittee and Permittee's officers, agents, employees, and contractors comply with Applicable Laws regarding pets, including the NPS regulation at 36 C.F.R. § 2.15.

m) In order to ensure public health and safety, Permittee shall allow all appropriate Federal, State and/ or County agencies; including the United States Department of Health and Human Services, the State of California Department of Health Services and Marin County Community Development Agency Environmental Health Services, to conduct inspections on a routine basis.

4) <u>SPECIAL PERMIT CONDITIONS</u>

a) Based upon the findings of an independent science review and/or NEPA compliance, Permitter reserves its right to modify the provisions of this Article 4. Permitter further reserves its right to incorporate new mitigation provisions based upon the findings of an independent science review.

i) The maximum annual production limit for oysters, rock scallops and clams will be 700,000 pounds.

ii) No additional aquaculture racks and/or cultivation infrastructure will be constructed. Operation, repair, and maintenance of infrastructure currently being used for oyster cultivation is permitted.

iii) Permittee and Permitter acknowledge the importance of eelgrass within the ecology of the estuary. Permittee will not place bags for shellfish production onto eelgrass.

iv) Within sixty (60) days following the signing of this interim Permit, Permittee will submit for National Park Service approval a boating operations plan, which will indicate dedicated navigation routes, chosen to minimize impacts to eelgrass beds when accessing aquaculture racks and/or cultivation equipment.

v) To minimize the chances of introducing invasive species or pathological microorganisms to Drake's Estero, Permittee will only import shellfish in the form of larvae and seed. Within 30 days of the Commencement Date, Permittee shall produce sufficient evidence, for the review and approval of the Permitter, that larvae and seed from outside sources have been certified by the California Department of Fish and Game ("CDFG") to be free of pathogens. If the Permitter determines that the evidence is insufficient, Permittee shall cease from importing larvae within 30 days of receiving notification of the determination from the Permitter.

vi) Permittee will not introduce species of shellfish beyond those described in the existing leases from the CDFG. Permittee may seek to conform and/or modify these leases with the CDFG. Any modifications approved by CDFG will be considered by Permitter on a case-by-case basis, and Permittee may not implement any such

modifications without the prior written approval of the Permitter.

vii) Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites. The Marine Mammal Protection Act, 16 U.S.C. 1361 et seq., includes a prohibition against any act of pursuit, torment or annoyance that has the potential to injure or disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering. The National Oceanic and Atmospheric Administration (NOAA) recommends maintaining a distance of at least 100 yards to avoid disturbance to seals. Permittee will maintain a distance of at least 100 yards from hauled out seals throughout the year. Permitter will monitor marine mammal populations in Drakes Estero. In addition, during the pupping harbor seal closure period, March 1-June 30, the designated wilderness area (outside of Permit area) is closed to all boats. Permittee will follow "Drakes Estero Aquaculture and Harbor Seal Protection Protocol" attached hereto as Exhibit C. If required by CDHS, watercraft may use the Main Channel identified in Exhibit C during the pupping harbor seal closure period only to access CDHS's sentinel monitoring station for marine biotoxins. Boats shall be operated at low speed, near the eastern shore, to minimize chance of disturbance to harbor seals. No other use of the Main Channel is authorized during the pupping harbor seal closure period.

5) ACCEPTANCE OF PREMISES

a) Prior to entering into this Permit, Permittee has made a thorough, independent examination of the Premises and all matters relevant to Permittee's decision to enter into this Permit, and Permittee is thoroughly familiar with all aspects of the Premises and is satisfied that they are in an acceptable condition and meet Permittee's needs, provided that Permittee and Permitter acknowledge that certain repairs are necessary to comply with Applicable Laws. Permittee will make such repairs at its sole cost and expense in compliance with Applicable Laws.

b) Permittee expressly agrees to use and occupy the Premises and all improvements thereon in their existing "AS IS" condition "WITH ALL FAULTS" and acknowledges that in entering into this Permit, Permittee does not rely on, and Permitter does not make, any express or implied representations or warranties as to any matters including, without limitation, the suitability of the soil or subsoil; any characteristics of the Premises or improvements thereon; the suitability of the Premises for the approved use; the economic feasibility of Permittee's use and occupancy of the Premises; title to the Premises; the presence of Hazardous Materials in, on, under or in the vicinity of the Premises; or any other matter. Permittee has satisfied itself as to such suitability and other pertinent matters by Permittee's own inquiries and tests into all matters relevant to determining whether to enter into this Permit and Permittee hereby accepts the Premises.

6) CONSTRUCTION OF IMPROVEMENTS OR ALTERATIONS

a) Permittee may only make those Improvements or Alterations to the Premises that relate to Permittee's use of the Premises as specified in Article 3, "Use of the Premises."

b) Permittee shall not undertake any Improvements or Alterations to the Premises (including installation of temporary equipment or facilities) without the prior written approval of Permitter.

c) As a prerequisite to obtaining approval for Improvements or Alterations, Permittee, at Permittee's sole cost and expense, shall submit design plans and any other relevant data for Permitter's approval.

d) Construction of Improvements or Alterations by Permittee shall be performed in accordance with all Applicable Laws, including but not limited to general planning, building, and environmental laws and approved design plans and shall be undertaken and completed at Permittee's sole cost and expense.

e) Permittee shall, upon request, furnish Permitter with a true and correct copy of any contract, and any modification or amendment thereof, with Permittee's contractors, architects, or any other consultants, engaged in connection with this Permit.

f) Any Improvements or Alterations undertaken by Permittee shall be performed in a good and workmanlike manner and with materials of a quality and standard acceptable to Permitter. Permittee shall also construct, install and

maintain equipment and any construction facilities on the Premises in a safe and orderly manner.

g) Permittee shall not construct any Improvements or Alterations outside the boundaries of the Premises.

h) Permitter in its discretion is entitled to have on the Premises at any time during the construction of Improvements or Alterations an inspector or representative who shall be entitled to observe all aspects of the construction on the Premises.

i) All lumber utilized at the site will be processed in compliance with current laws and regulations regarding wood treatments. This includes lumber utilized in assembly and repair of aquaculture racks.

j) As set forth in Article 17, title to any Improvements or Alterations to the Premises shall be and remain solely in the Permitter.

7) TREATMENT OF REFUSE

a) Refuse shall be promptly removed from within the boundaries of Point Reyes National Seashore and shall be disposed of in accordance with Applicable Laws.

b) Permittee will make best efforts to remove debris associated with aquaculture production operations including wood from racks, plastic spacers, unused shellfish bags, shellfish shells, and any other associated items.

8) PESTICIDE AND HERBICIDE USE

a) The National Park Service utilizes Integrated Pest Management ("IPM") to treat pest and vegetation problems. The goal of IPM is to use the least-toxic, effective methods of controlling pests and vegetation. Except for normal household purposes, Permittee shall not use any pesticides that do not comply with the IPM program. To this end, Permittee shall submit in writing to Permitter, a request for the use of pesticide(s) or herbicide(s) and shall not use any pesticide(s) or herbicide(s) until Permittee has received an express written authorization therefor from Permitter.

b) Permittee shall manage, treat, generate, handle, store and dispose of all pesticides and herbicides in accordance with Applicable Laws, including reporting requirements.

9) FIRE PREVENTION AND SUPPRESION

a) Permittee and its employees, agents, and contractors shall, in Permittee's use and occupancy of the Premises, take all reasonable precautions to prevent forest, brush, grass, and structural fires and shall, if safety permits, assist the Permitter in extinguishing such fires on the Premises.

10) EXCAVATION, SITE AND GROUND DISTURBANCE

a) Permittee shall not cut, remove or alter any timber or any other landscape feature; conduct any mining or drilling operations; remove any sand, gravel or similar substances from the ground or watercourse; commit waste of any kind; or in any manner change the contour or condition of the Premises without the prior written approval of the Permitter. Except in emergencies, Permittee shall submit requests to conduct such activities in writing to the Permitter not less than sixty (60) days in advance of the proposed commencement date of any such activities.

b) If approval of activities referenced above in Section10(a) is granted, Permittee shall abide by all the terms and conditions of the approval, including provisions pertaining to archaeological resources.

c) No soil disturbance of any kind may occur in the vicinity of a known archeological site, without the presence of an NPS archeological monitor.

11) NONPOINT SOURCE POLLUTION

a) The Permittee shall comply with all Applicable Laws regarding non-point source pollution (including the protection of beneficial uses of waters as designated by the State of California). Further, Permittee's use and occupancy of the Premises shall be designed to minimize, to the greatest extent feasible, non-point source pollution within National Park Service boundaries or on adjacent lands.

b) As set forth in Section 3(k) of this Permit, no discharge into the estuary is permitted. This prohibition includes any discharge from processing facilities.

12) TREE AND VEGETATION REMOVAL

a) The Permittee may not remove tree(s) or vegetation unless expressly approved in writing by the Permitter. The Permittee shall provide specific plans to the Permitter for desired tree(s) and vegetation removal during the annual meeting or in writing during the Term of this Permit.

b) Removal of non-native invasive vegetation such as non-native thistles, trimming and vegetation removal around structures is permissible.

13) WILDLIFE PROTECTION

a) Wildlife is an integral part of Point Reyes National Seashore and must be managed in accordance with all Applicable Laws, including but not limited to NPS laws, regulations, and policies.

b) Permittee shall not engage in any activity that purposely causes harm or destroys any wildlife. Conversely, Permittee shall not engage in any activity that purposely supports or increases populations of non-native or invasive animal species, except for the cultivation of the shellfish species authorized by this Permit.

c) As set forth in Section 3(j) of this Permit, Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites.

d) On a case by case basis, the Permitter will evaluate incidences of depredation caused by Permittee and choose a course of action. The nature of the course of action will be determined by the extent and frequency of the damage, the wildlife species, and park-wide management objectives.

14) HAZARDOUS MATERIALS; ENVIRONMENTAL HEALTH AND SAFETY

a) In connection with this Permit, Permittee, its officers, agents, employees and contractors, shall not use, generate, sell, treat, keep, or store any Hazardous Materials on, about, under or into the Premises or elsewhere in Point Reyes except in compliance with all Applicable Laws and as approved in writing by Permitter. However, Permittee shall not be obligated to obtain Permitter's approval to use, keep, or generate Hazardous Materials as necessary for the normal operation or maintenance of vehicles or for standard household cleaners. Permittee agrees to be responsible for timely acquisition of any permit(s) required for its Hazardous Materials-related activities, and shall provide to the Permitter, upon request, inventories of all such Hazardous Materials and any supporting documentation, including but not limited to material safety data sheets, uniform waste manifest forms, and/or any other pertinent permits.

b) Permittee, its officers, agents, employees and contractors, shall not release, discharge or dispose of any Hazardous Materials from, on, about, under or into the Premises or elsewhere in Point Reyes, except as authorized by Applicable Laws.

c) If Permittee knows of or reasonably suspects or receives notice or other communication concerning any past, ongoing, or potential violation of Environmental Requirements in connection with the Premises or Permittee's activities, Permittee shall immediately inform Permitter and shall provide copies of any relevant documents to Permitter. Receipt of such information and documentation shall not be deemed to create any obligation on the part of the Permitter to defend or otherwise respond to any such notification.

d) If any Hazardous Materials Occurrence is caused by, arises from, or is exacerbated by the activities authorized

under this Permit or by the use of the Premises by Permittee, its officers, agents, employees or contractors, Permittee shall promptly take all actions at its sole cost and expense as are required to comply with Applicable Laws and to allow the Premises and any other affected property to be used free of any use restriction that could be imposed under Applicable Laws; provided that, except in cases of emergency, Permitter's approval of such actions shall first be obtained.

e) The Permitter shall have the right, but not the duty, at all reasonable times and, except in the case of emergency, following at least twenty-four (24) hours advance notice to Permittee, to enter and to permit any Agency, public or private utilities and other entities and persons to enter upon the Premises, as may be necessary as determined by the Permitter in its sole discretion, to conduct inspections of the Premises, including invasive tests, to determine whether Permittee is complying with all Applicable Laws and to investigate the existence of any Hazardous Materials in, on or under the Premises. The Permitter shall have the right, but not the duty, to retain independent professional consultants to enter the Premises to conduct such inspections and to review any final report prepared by or for Permittee concerning such compliance. Upon Permittee's request, the Permitter will make available to Permittee copies of all final reports and written data obtained by the Permitter from such tests and investigations. Permittee shall have no claim for any injury or inconvenience to or interference with Permittee's use of the Premises or any other loss occasioned by inspections under this Section 14(e). Notwithstanding the foregoing, neither Permittee nor Permitter shall be required to provide a report under this Section 14(e) if such report is protected by attorney-client privilege.

f) Should Permittee, its officers, agents, employees or contractors, fail to perform or observe any of the obligations or agreements pertaining to Hazardous Materials or Environmental Requirements for a period of thirty (30) days (or such longer period of time as is reasonably required) after notice, then Permitter shall have the right, but not the duty, without limitation of any other rights of Permitter under this Permit, personally or through its agents, consultants or contractors to enter the Premises and perform the same. Permittee agrees to reimburse Permitter for the costs thereof and to indemnify Permitter as provided for in this Permit.

g) Permittee understands and acknowledges that the Premises may contain asbestos and lead-based paint. If Permittee performs any Improvements or Alterations, Permittee shall comply with all Environmental Requirements related to asbestos and lead-based paint and shall solely bear all costs associated therewith. Nothing in this Permit shall be construed to require Permittee to remove asbestos or lead-based paint unless Environmental Requirements require such removal.

h) Permittee shall indemnify, defend, save and hold Permitter, its employees, successors, agents and assigns, harmless from and against, and reimburse Permitter for, any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments, and expenses, including without limitation, consultant fees and expert fees, that arise during or after the Term as a result of any violation of any Environmental Requirement in connection with this Permit or any Hazardous Materials Occurrence in connection with this Permit.

i) The provisions of this Article 14 shall survive any termination or revocation of this Permit. Article 15 (Insurance) of this Permit shall not limit in any way Permittee's or Permitter's obligations under this Article 14.

15) <u>INSURANCE</u>

a) Permittee shall purchase the types and amounts of insurance described herein before the Commencement Date of this Permit unless otherwise specified. At the time such insurance coverage is purchased, Permittee shall provide Permitter with a statement of Permittee insurance describing the insurance coverage in effect and a Certificate of Insurance covering each policy in effect as evidence of compliance with this Permit. Permittee shall also provide the Permitter thirty (30) days advance written notice of any material change in the Permittee's insurance program hereunder. Permitter shall not be responsible for any omissions or inadequacies in insurance coverage or amounts in the event such coverage or amounts prove to be inadequate or otherwise insufficient for any reason whatsoever.

b) From time to time, as conditions in the insurance industry warrant, the Permitter reserves the right to revise the minimum insurance limits required in this Permit.

c) All insurance policies required by this Permit shall specify that the insurance company shall have no right of subrogation against the United States, except for claims arising solely from the negligence of the United States or its employees, or shall provide that the United States is named as an additional insured.

d) All insurance policies required herein shall contain a loss payable clause approved by the Permitter which requires insurance proceeds to be paid directly to the Permittee without requiring endorsement by the United States. Insurance proceeds covering any loss of the Premises but not used to replace such losses shall be promptly paid by Permittee to Permitter. The use of insurance proceeds for the repair, restoration or replacement of the Premises shall not give any ownership interest therein to Permittee.

e) Property Insurance: At a minimum, the Permittee shall be required to purchase Basic Form Actual Cash Value (replacement cost less depreciation) insurance coverage for all residence on the Premises. Within thirty days of issuance of the Permit, the Permittee shall submit a report from a reputable insurance company which provides a full range of options for insurance coverage on all nonresidential structures on the Premises. Within thirty days of receipt of this report, the Permitter, in its sole discretion, will review and specify the type and level of insurance coverage which shall be required. The Permitter will provide the Permittee written notification of insurance requirements and the Permittee shall be required to have the specified level(s) of insurance in place within thirty days of such notification. The cost of the insurance will be deducted from the appraised fair market value for the Premises; this adjustment and the insurance requirements will be addressed in an amendment to the Permit. Permittee shall, in the event of damage or destruction in whole or in part to the Premises, use all proceeds from the above described insurance policies to repair, restore, replace or remove those buildings, structures, equipment, furnishings, betterments or improvements determined by the Permitter, in Permitter's sole discretion, to be necessary to satisfactorily discharge the Permittee's obligations under this Permit.

f) Public Liability: The Permittee shall provide Comprehensive General Liability insurance against claims arising from or associated with Permittee's use and occupancy of the Premises. Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such use and occupancy, but in any event, the limits of such insurance shall not be less than $1,000,000.00 per occurrence covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, the Permittee shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a Comprehensive General Liability Policy, may be used to achieve the required limits.

g) Permittee shall also obtain the following additional coverage:

   i) Automobile Liability – To cover all owned, non-owned, and hired vehicles in the amount of $300,000.00.

   ii) Workers' Compensation – The amount shall be in accordance with that which is required by the State of California.

16) <u>INDEMNITY</u>

a) In addition to the indemnification contained in Article 14, Permittee shall indemnify, defend, save and hold Permitter, its employees, successors, agents and assigns, harmless from and against, and reimburse Permitter for, any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments and expenses and the like incurred in connection with or arising in any way out of this Permit; the use or occupancy of the Premises by Permittee or its officers, agents, employees, or contractors; the design, construction, maintenance, or condition of any Improvements or Alterations; or any accident or occurrence on the Premises or elsewhere arising out of the use or occupancy of the Premises by Permittee or its officers, agents, employees, or contractors. Permittee's obligations hereunder shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably approved by Permitter), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against the United States.

b) Permitter agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal

Tort Claims Act against the United States by third parties for personal injuries or property damage resulting from the negligent act or omission of any employee of the United States in the course of his or her employment.

c) This Article 16 shall survive any termination or revocation of this Permit. The provisions of Article 15 (Insurance) of this Permit shall not limit in any way Permittee's obligations under this Article 16.

17) PROPERTY INTEREST

a) This Permit shall vest in Permittee no property interest in the Premises or in the improvements thereon. Title to real property and improvements thereon, including any Improvements or Alterations constructed by Permittee, shall be and remain solely in Permitter. Except as provided in Paragraph 3(g), Permittee shall have no claim for any compensation or damages for the Premises, the improvements thereon, or any Improvements or Alterations constructed by the Permittee.

b) Nothing in this Permit shall give or be deemed to give Permittee an independent right to grant easements or other rights-of-way over, under, on, or through the Premises.

c) Permitter hereby retains the sole and exclusive right to oil, gas, hydrocarbons, and other minerals (of whatsoever character) in, on, or under the Premises.

18) RENTS, TAXES AND ASSESSMENTS

a) The annual rental rate for this Permit shall be established by Permitter and is set forth on the Cover Page of this Permit.

b) The annual rent under this Permit is payable in advance on a semi-annual basis. Therefore, Permittee hereby agrees to pay fifty percent of the annual rate on or before November with the remaining fifty percent payable on or before May of each year during the Term.

c) Permittee shall pay the proper Agency, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time during the Term of this Permit, are levied or assessed against the Premises.

d) Rents due hereunder shall be paid without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment or reduction.

19) CYCLIC MAINTENANCE

a) Permittee shall perform all Cyclic Maintenance in accordance with the Provisions of this Permit and at Permittee's sole cost and expense. Permittee is responsible for the maintenance of all fences, buildings, and other improvements upon the Premises. All improvements and facilities used and occupied by Permittee shall at all times be protected and maintained in a safe, sanitary and sightly condition.

b) Specific maintenance requirements may be negotiated with Permittee each year as outlined in Article 21 (Annual Meeting).

c) Docks and Fences shall be maintained in good condition and shall be timely repaired in conformance with Applicable Laws. Abandoned fences and other decrepit improvements shall be removed from the Premises and shall be disposed of outside the Park or as directed by Permitter after review and approval by the NPS Historian.

d) New lighting under Permittee's control of the Premises shall be redesigned to protect and preserve the night sky/darkness and minimize light pollution in Drakes Estero.

e) Parking areas shall be maintained in a safe condition and no new roads or truck trails shall be established without prior written permission of the Permitter. The main entrance road from Sir Francis Drake Boulevard to the SUP Area will be maintained by the NPS. The Park will respond in a timely manner to Permittee and/or visitor

complaints regarding the condition of the main entrance road.

f) Existing water reservoirs shall be maintained in a safe and secure condition to prevent washouts and erosion and no new reservoirs shall be constructed or established without prior written approval of the Permitter.

g) Permittee shall maintain the water, well, pump and all pipelines within the Premises. Permittee shall replace or repair any damage or loss of the water system within the Premises.

h) Permittee shall maintain the sewage pipeline and sewage leachfield in the "Sewage Area."

i) Permittee shall be responsible for removing slash buildup around fences or other facilities within the Premises so as to prevent fire and egress hazards. Permittee shall also be responsible for removing litter and trash from the Premises.

20) COMPLIANCE WITH APPLICABLE LAWS; NEPA, NHPA

a) General Compliance: As provided for in this Permit, Permittee at its sole cost and expense shall promptly comply with all Applicable Laws. Permittee shall immediately notify Permitter of any notices received by or on behalf of Permittee regarding any alleged or actual violation(s) of or non-compliance with Applicable Laws. Permittee shall, at its sole cost and expense, promptly remediate or correct any violation(s) of Applicable Laws.

b) National Environmental Policy Act and National Historic Preservation Act: Where activities undertaken by Permittee relate to the preparation of compliance documents pursuant to the National Environmental Policy Act ("NEPA") or the National Historic Preservation Act ("NHPA"), Permittee shall supply all necessary information to Permitter and any Agency in a timely manner. Permitter will pay for the preparation of NEPA or NHPA documents. If there is litigation regarding NEPA or NHPA compliance, it will not trigger the indemnification requirements of Article 16.

21) ANNUAL MEETING

a) The Parties shall meet annually each year during the Term of this Permit for the purposes of discussing and resolving issues of mutual concern and ensuring that Permittee is complying with the Provisions of this Permit..

22) PENALTY

a) At the option of the Permitter, Permitter may, in lieu of voiding and terminating this Permit, assess a penalty of $50.00 per day for any failure by Permittee to keep and perform any of the Provisions of this Permit. In such case, Permittee shall be given notice in writing of a grace period (of from one to thirty days) to remedy the situation before a penalty will be assessed. Payment of any penalty under this provision shall not excuse Permittee from curing the Default. This provision shall not be construed as preventing Permitter from issuing citations or initiating enforcement proceedings under Applicable Laws.

23) SURRENDER AND VACATE THE PREMISES, RESTORATION

a) At the conclusion of Permittee's authorization to use the Premises for the Permitted Uses, Permittee shall surrender and vacate the Premises, remove Permittee's Personal Property therefrom, and repair any damage resulting from such removal. Subject to the approval of the Permitter, Permittee shall also return the Premises to as good order and condition (subject to ordinary wear and tear and damage that is not caused directly or indirectly by Permittee) as that existing upon the Effective Date.

b) All Permittee's Personal Property shall remain the property of Permittee. However, if after the conclusion of Permittee's authorization to use the Premises for the Permitted Uses, Permittee shall fail satisfactorily to remove Permittee's Personal Property and so repair the Premises, then, at the Permitter's sole option, after notice to Permittee, Permittee's Personal Property, shall either become the property of the Permitter without compensation therefore, or the Permitter may cause it to be removed and the Premises to be repaired at the expense of

Permittee, and no claim for damages against Permitter, its employees, agents or contractors shall be created or made on account of such removal or repair work.

24) LIMITATION ON EFFECT OF APPROVALS

a) All rights of Permitter to review, comment upon, approve, inspect or take any other action with respect to the use and occupancy of the Premises by Permittee, or any other matter, are expressly for the benefit of Permitter and no other party. No review, comment, approval or inspection, right or exercise of any right to perform Permitter's obligations, or similar action required or permitted by, of, or to Permitter under this Permit, or actions or omissions of Permitter's employees, contractors, or other agents, or other circumstances shall give or be deemed to give Permitter any liability, responsibility or obligation for, in connection with, or with respect to the operation of the Premises, nor shall any such approval, actions, information or circumstances relieve or be deemed to relieve Permittee of its obligations and responsibilities for the use and occupancy of the Premises as set forth in this Permit.

25) WAIVER NOT CONTINUING

a) The waiver of any Default, whether such waiver be expressed or implied, shall not be construed as a continuing waiver, or a wavier of or consent to any subsequent or prior breach of the same or any other provision of this Permit. No waiver of any Default shall affect or alter this Permit, but each and every Provision of this Permit shall continue in full force and effect with respect to any other then existing or subsequent Default.

26) LIENS

a) Permittee shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion, fee interest or other estate of the Permitter or of any interest of the Permitter in the Premises. If any such lien shall at anytime be filed against the Premises or any portion thereof, Permittee shall cause the Permitter to be discharged from the lien.

27) HOLDING OVER

a) This Permit shall terminate upon the Termination Date and any holding over by Permittee after the Termination Date shall not constitute a renewal of this Permit or give Permittee any rights under this Permit or in or to the Premises.

28) NOTICES

a) Any notice or other communication required or permitted under this Permit shall be in writing and shall be delivered by hand or certified mail with return receipt requested. Notices and other communications shall be addressed as follows:

If to Permitter:

Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

If to Permittee:

Mr. Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

29) NO PARTNERSHIP OR JOINT VENTURE

a) Permitter is not for any purpose a partner or joint venturer of Permittee in the development or operation of the Premises or in any business conducted on the Premises. Permitter shall not under any circumstances be responsible or obligated for any losses or liabilities of Permittee.

30) ANTI-DEFICIENCY ACT

a) Permittee and Permitter agree that nothing contained in this Permit shall be construed as binding Permitter to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the subject matter of this Permit, or to involve Permitter in any contract or other obligation for the future expenditure of money in excess of such appropriations.

31) COMPLIANCE WITH EQUAL OPPORTUNITY LAWS

a) Permittee agrees that in undertaking all activities pursuant to this Permit, Permittee will comply with all Applicable Laws relating to non-discrimination.

32) ENTIRE AGREEMENT AND AMENDMENT

a) This instrument, together with the exhibits hereto, all of which are incorporated in this Permit by reference, constitutes the entire agreement between Permitter and Permittee with respect to the subject matter of this Permit and supersedes all prior offers, negotiations, oral and written. This Permit may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Permitter and Permittee.

33) NO PAYMENTS BY PERMITTER

a) Under no circumstances or conditions, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall Permitter be expected or required to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability except as expressly set forth in this Permit.

34) NO THIRD PARTY BENEFICIARIES

a) Except as expressly set forth in this Permit, this Permit shall not be deemed to confer upon any person or entity, other than the parties to this Permit as expressly set forth in this Permit, any third party beneficiary status, any right to enforce any Provision of this Permit, or any other right or interest.

35) NO PREFERENTIAL RENEWAL AND RELOCATION ASSISTANCE

a) Permittee hereby agrees that Permittee is not a concessioner and that the provisions of law regarding National Park Service concessionaires do not apply to Permittee. No rights shall be acquired by virtue of this Permit entitling Permittee to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

36) SEVERABILITY

a) In case any one or more of the provisions of this Permit shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Permit, and this Permit shall be construed as if such invalid, illegal or unenforceable provisions had not been contained in this Permit.

37) EXHIBITS

a) Each of the exhibits referenced in this Permit is attached hereto and incorporated herein.

38) TIME OF THE ESSENCE

a) Time is hereby expressly declared to be of the essence of this Permit and of each and every Provision of this Permit.

39) HEADINGS

a) Article, Section and Subsection headings in this Permit are for convenience only and are not to be construed as a part of this Permit or in any way limiting or amplifying the Provisions of this Permit.

40) PERMIT CONSTRUED AS A WHOLE

a) The language in all parts of this Permit shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Permitter or Permittee. The Parties acknowledge that each party and its counsel have reviewed this Permit and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed or applied in the interpretation of this Permit.

41) MEANING OF TERMS

a) Whenever the context so requires, the neuter gender shall include the masculine and the feminine, and the singular shall include the plural and vice versa.

42) FEDERAL LAW

a) The laws of the United States shall govern the validity, construction and effect of this Permit.

LIST OF EXHIBITS

EXHIBIT A: Map – Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area

EXHIBIT B: Map – Drake's Estero Oysters – SUP & ROP

EXHIBIT C: Drakes Estero Aquaculture and Harbor Seal Protection Protocol

EXHIBIT D: Map – Drakes Bay Oyster Company Well Area

EXHIBIT E: Map – Drakes Bay Oyster Company Sewage Area

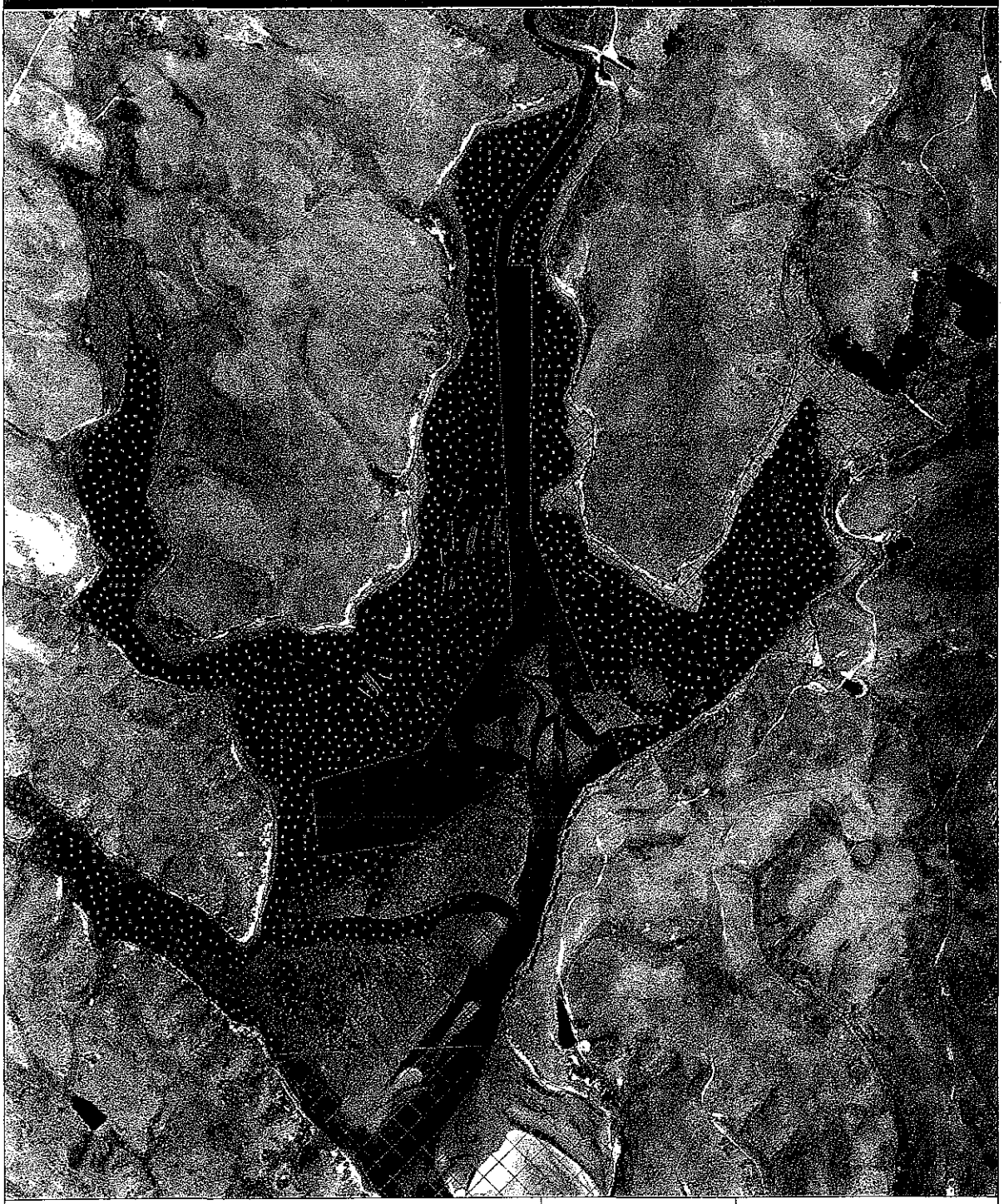
EXHIBIT A

Map – Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area

Drake's Estero Aquaculture & CDFG Leases

NPS Resources and SUP Area

National Park Service
U.S. Department of the Interior



Permit Type

- ROP
- SUP

Oyster Racks

- Active
- Dilapidated

- Aquaculture Lease/SUP Area
- Potential Wilderness
- Existing Wilderness

Map Location

N
W E
S

0 0.5 Miles

EXHIBIT B

Map – Drake's Estero Oysters – SUP & ROP

Drake's Estero Oysters - SUP & ROP

National Park Service
Point Reyes National Seashore
Marin County, CA

N
W E
S

0 50 100 150 200
Feet

Permit Type

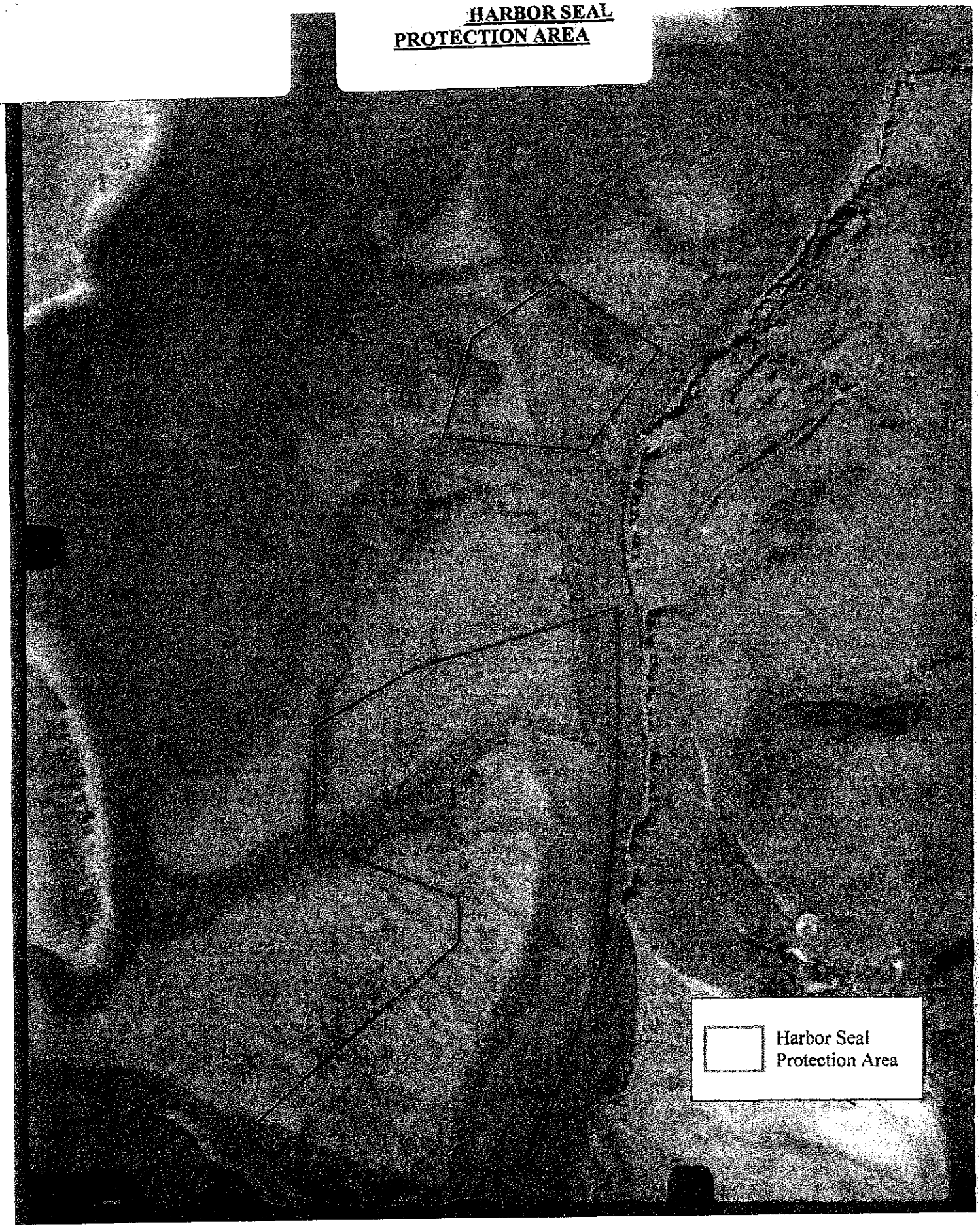
ROP - 1.5 acres

SUP - 1.1 acres

EXHIBIT C

Drakes Estero Aquaculture and Harbor Seal Protection Protocol

HARBOR SEAL PROTECTION AREA



Drakes Estero Aquaculture and
Harbor Seal Protection Protocol

The following items are mutually agreed to for protection of harbor seals in and adjacent to the Harbor Seal Protection Areas identified in the Map, attached hereto and incorporated herein by reference ("Protocol Map"):

1. During the breeding season, March 1 through June 30, the "Main Channel" and "Lateral Channel" of Drakes Estero will be closed to boat traffic. During the remainder of the year, the Lateral Channel and Main Channel are open to boat traffic outside of the protection zone.

2. During the breeding season, Permittee boats may use the "West Channel" at low speed while maintaining a distance of at least 100 yards from hauled out seals.

3. Throughout the year, all of Permittee's boats, personnel, and any structures and materials owned or used by Permittee shall be prohibited from the harbor seal protection areas identified on the Protocol Map. In addition, all of the Permittee's boats and personnel shall be prohibited from coming within 100 yards of hauled out harbor seals.

EXHIBIT D

Map – Drakes Bay Oyster Company Well Area

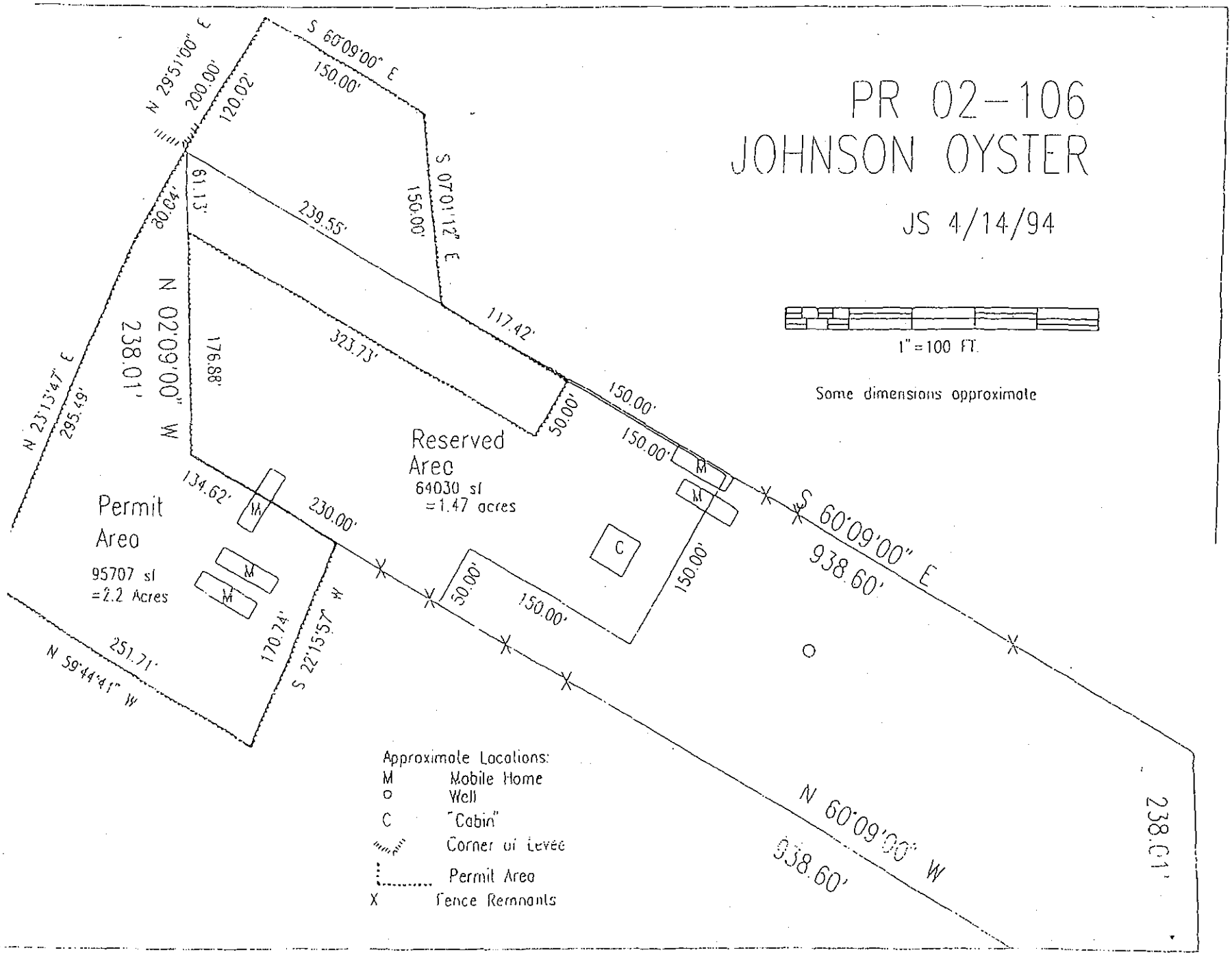

PR 02-106
JOHNSON OYSTER
JS 4/14/94
1" = 100 FT.
Some dimensions approximate
N 29°51'00" E
200.00'
120.02'
S 60°09'00" E
150.00'
S 07°01'12" E
150.00'
239.55'
117.42'
323.73'
150.00'
50.00'
150.00'
150.00'
S 60°09'00" E
938.60'
N 60°09'00" W
938.60'
238.01'
N 02°09'00" W
238.01'
61.13'
80.64'
176.88'
N 23°13'47" E
295.49'
134.62'
230.00'
170.74'
S 22°15'57" W
251.71'
N 59°44'41" W
50.00'
150.00'
150.00'
Reserved
Area
64030 sf
=1.47 acres
Permit
Area
95707 sf
=2.2 Acres
M
C
Approximate Locations:
M Mobile Home
o Well
C "Cabin"
Corner of Levee
Permit Area
X Fence Remnants

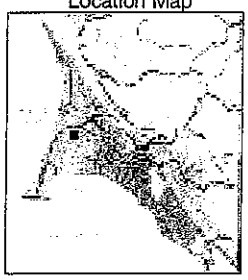
EXHIBIT E

Map – Drakes Bay Oyster Company Sewage Area

EXHIBIT

Oyster Farm Leach Field (Approximate Location and Size)

Location Map



National Park Service

Point Reyes National Seashore
Marin County, CA

Oyster Farm Leach Field

0 175 350 525 700 Feet

Plot Date: 1/7/08 S:/GIS/projects1/Range/SpecialParkUses/DBOLeachField.mxd

"Kevin Lunny"
<kevin@drakesbayoyster.com>

12/31/2007 11:43 AM

To "Jon Jarvis" <jon_jarvis@nps.gov>

cc "Kevin Lunny" <kevin@drakesbayoyster.com>, "Lesley Guth" <lguth@sfchronicle.com>, "Peter Fimrite" <PFimrite@sfchronicle.com>, "John Diaz"

bcc

Subject SF Chronicle article - 12/28/07

Jon,

Attached is a letter seeking clarification of statements recently made to the SF Chronicle. As indicated in the letter, we are at a loss to understand what you said or why. The signed orginal is being put in the mail today.

The calendar tells our family that 2007 comes to a close without resolution on our permits and with every accusation made by NPS from last April and May back on the table. It's as if you hit the "refresh" button on the keyboard.

It is our sincere hope that 2008 brings us resolution and to achieve it, your leadership is required. The National Park Service has been part of my life since I was in "short pants." Our mutual relationship, until recent times, has always been excellent. We speak for the entire family when we say that we long for a return to those times.

On behalf of the Lunny family, we extend best wishes for a happy and healthy New Year.

Kevin and Nancy Lunny

Lunny to Jarvis re SF Chron.pdf

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1149
kevin@drakesbayoyster.com
nancy@drakesbayoyster.com

December 31, 2007

Jon Jarvis
Regional Director, Pacific West Region
National Park Service
1111 Jackson Street, Suite 700
Oakland, CA 94607

Dear Mr. Jarvis.

National Park Service (NPS) accusations of environmental harm by Drakes Bay Oyster Company (DBOC) in Drakes Estero made by you in an article published by the San Francisco Chronicle (*"Dispute Over Oysters in Drakes Bay Pits Harvester Against Park Service,"* December 28, 2007) require explanation and clarification. Your statements contradict retractions you issued last September.

As you are aware, on May 8, 2007 the Marin County Board of Supervisors adopted Agenda Item No. 7, "*Supervisor Kinsey requesting approval of a letter to Senator Dianne Feinstein regarding management of Drake's Bay Estero.*" The Senator's assistance was requested after Don Neubacher, Point Reyes National Seashore Superintendent, informed Board President Steve Kinsey on April 5, 2007 that NPS was halting all work on permits for DBOC because of "criminal and civil" acts – green crimes and other violations of law and policy against the environment in Drakes Estero. In particular, Neubacher told Kinsey that NPS had overwhelming evidence that DBOC was harming harbor seals, a federally-protected marine mammal.

The Marin Board "Recommendation Memorandum" from Board President Kinsey states, "*Recently, I met with Superintendent Don Neubacher of the Point Reyes National Seashore and he shared his belief that the environmental consequences of the operation do not warrant facilitation of the necessary permits and regulatory actions required for the current owner to operate.*" Given the serious and sweeping nature of these accusations, the Marin Board sought Senator Feinstein's involvement and assistance.

At that hearing, Superintendent Neubacher led a delegation of four NPS officials who submitted reports, maps and made new and still more serious allegations. Harm to harbor seals was called a

"national issue" and a recently-received letter from the Marine Mammal Commission was cited as *"another reason why the permit (to DBOC) is not available at this time."* Another NPS official testified declaring *"this year, chronic disturbance and placement of bags on the nursery area has caused an 80% reduction in the seals..."* These provocative charges were quickly picked up and repeated by various environmental groups and now, were repeated once again in the December 28, 2007 issue of the San Francisco Chronicle.

The only problem – these accusations were, and still are, false. Immediately upon receipt of the Marin Board letter, Senator Feinstein formally asked the NPS to provide her with full and complete administrative record of recorded ecological and environment harm by DBOC. Under the circumstances, one would expect NPS to rush forward with evidence of criminality and other wrong-doing. It did not happen. NPS took almost two months to respond to the Senator and when they did, there was nothing in that record. No letters. No violations. No citations. No record of meetings or telephone calls advising us of any wrong-doing. No administrative record of ecological or environmental harm to the Estero or its resources by DBOC. Similarly, California Department of Fish and Game, who owns the lease by which we operate in Drakes Estero, had not heard one word from NPS that substantiates NPS claims of ecological harm.

The Senator convened a meeting at Olema on July 21, 2007 attended by the representatives from the California Coastal Commission and California Department of Fish and Game (CDFG), Supervisor Kinsey and a delegation from NPS led by Director Bomar and Deputy Director Wenk, Superintendent Neubacher, you and others. I was present as was Dr. Goodman. At the conclusion of the meeting, Senator Feinstein and all parties agreed to, among other things:

- *remove* the NPS Report, *"Drakes Estero, A Sheltered Wilderness Estuary,"* from the Point Reyes National Seashore web site;
- *collaborate* with Dr. Goodman in the preparation of a statement of correction for positing on the Point Reyes National Seashore web site;
- *arrange,* in collaboration with Dr. Goodman and CFDG's Tom Moore, for an independent outside scientific review of the NPS Report, *"Drakes Estero, A Sheltered Wilderness Estuary,"* related public presentation and underlying NPS science to be undertaken;
- *release* all the harbor seal data to Dr. Goodman by August 6;
- *respond* to all outstanding FOIA requests;
- *withhold* the issuance of a Point Reyes National Seashore ready-to-be-released "rebuttal" paper to Dr. Goodman's testimony until the independent science review is completed; and,

- *provide* copies of peer reviews of the Drakes Estero Report to Dr. Goodman.

On September 19, 2007, you sent Dr. Goodman a NPS peer-reviewed document entitled, *"Clarification of Law, Policy and Science in Drakes Estero* " dated September 18, 2007 in which every major accusation made by Superintendent Neubacher and his staff against the Drakes Bay Oyster Company and its operations was **retracted**.

- NPS Accusations about Impacts to Fish – **RETRACTED.**
- NPS Accusations about Impacts to Sediment –**RETRACTED.**
- NPS Accusations about Impacts to Harbor Seals – **RETRACTED.**
- NPS Accusations about Impacts from Oyster Feces – **RETRACTED.**

Notwithstanding these **retractions** prepared by you and sent to Dr. Goodman, you now tell the San Francisco Chronicle that:

> ***"There are some inherent differences of opinion about whether there is a positive or negative effect on eelgrass, harbor seals and general water quality," said Jon Jarvis, the regional director for the Pacific West division of the National Park Service. "Our research would indicate there are some negative effects."***

Yet, 90 days ago, in your formal "*Clarification*" document, you stated:

With regard to eelgrass:

> ***The current level of impact to eelgrass beds by the oyster operation may or may not be significant to the overall persistence of eelgrass within Drakes Estero.***

With regard to oyster feces:

> ***The Eliott-Fisk et al (2005) report notes oyster feces are not a problem in Drakes Estero.***

With regard to water quality:

> ***The extent of indirect adverse impacts from boat operations or changes to water quality has not been measured and further research is clearly needed to determine the extent***

and persistence of these impacts.

With regard to harbor seals:

> ***More focused analyses are required to determine if oyster operations are affecting seal distribution and productivity within Drakes Estero. The overall Drakes Estero and regional population declined in 2007, but not necessarily in response to the oyster farming operations.***

Each of these retractions reversed accusations made by NPS during April and May 2007 in NPS Reports, NPS testimony or in NPS statements in the media.

If NPS determined in December 2007, as you have informed the Chronicle, that negative impacts are occurring, then such a determination could only come from new, undisclosed research conducted by or at the direction of NPS sometime after September 19, 2007.

(1) With regard to this new research, please provide a description of the scope and magnitude of it, and which issues were included or not, and kindly provide full and complete responses to the following questions:

(a) Identify the new research.

(b) Identify the author(s) of the new research.

(c) Did you contract for this new research or conduct it in-house?

(d) Provide the work plan for this new research.

(e) In the preparation of both the work plan and the resulting research, did NPS adhere to the DOI and NPS requirements for "scholarly analysis" as provided for in the NPS 2006 Management Policy? If so, please indicate how this was accomplished.

(f) Did you adhere to the Federal policies for peer-review of this new research?

(g) Provide a copy of the peer-review work plan and resulting recommendations as specified and described in your *Clarification* document.

(h) Provide a copy of the research product or products.

(i) Was the research, when completed, peer-reviewed to ensure conformity with the required peer-review plan?

(j) Since this research, based on your statement to the Chronicle, concluded there were negative impacts, why haven't you or staff from Point Reyes contacted us so that whatever problems were identified could be addressed?

(k) Why weren't we notified that this research was underway?

(l) Why weren't we informed when results were available?

(m) When and how did you notify CDFG?

With regard to harbor seals, the Chronicle story goes on to say:

> ***"Park service officials recently complained that Lunny expanded his operation to an area historically used by female harbor seals and their pups and that oyster boats were observed scaring off seals in the area. The park service said harbor seals declined from 250 to 50 in the area Lunny recently developed."***

These statements conflict with two very specific retractions made by you in your *Clarification* document from 90 days prior. At the end of September, the National Park Service, in its *Clarification* document did not know whether or not oyster operations were having any negative impacts to harbor seals and acknowledged that other factors may and likely do impact the harbor seal colony (ocean conditions, climate change, food availability, etc.). Yet, by December, NPS informs the Chronicle that (a) Park Service officials recently complained about the oyster farm; (b) we expanded our operation; (c) we expanded it into areas historically used by seals and pups; (d) oyster boats were observed scaring off seals; and (e) harbor seals declined five-fold – from 250 to 50 in the area specifically "developed" by our company (DBOC).

Presumably, to support these accusations, NPS developed new information and new documentation.

With regard to these NPS accusations:

(2) The Chronicle story states that "*Park Service officials recently complained…*"

(a) To whom did NPS complain?

(b) Why did NPS fail to complain to us?

(c) Did NPS complain to anyone else associated with DBOC? If so, please identify to whom and when?

(d) Provide the record made of that communication.

(e) Did NPS complain to CDFG? If so, please identify to whom and when.

(f) Provide the record made of the communication with CFDG.

(g) Did NPS file an official complaint to anyone who could have made a change in protocols during the 2007 harbor seal pupping season?

(3) The Chronicle story, in the same paragraph, goes on to state, *"... that Lunny expanded his operation to an area historically used by female harbor seals and their pups..."*

(a) Precisely to where did we expand our operation to areas "*historically used by female harbor seals and their pups*"?

(b) We and CDFG are certain that oysters are being grown only in historically utilized oyster beds. If NPS is aware of any newly developed oyster beds, please show on a historic 1992 map into which historic harbor seal haul-out area you are claiming that we expanded our operation.

(c) We are unaware of any change to the location of our oyster bags in 2007. Is NPS aware of any change in location outside or beyond historic growing beds?

(d) The oyster bags are on the island/sandbar UEN. The harbor seals are on the east side of island/sandbar UEN. Oysters have been grown this way, in the same places, for many decades. Explain what change in operations took place this year that is inconsistent with historic use.

(e) We are, however, now aware of a change to your harbor seal haul out map. This new haul out map, which was never provided to us, was included with the April 13 and 26, 2007 NPS Trip Reports and submitted to the Marin County Board of Supervisors on May 8, 2007. When was this new map created?

(f) Why was this new map created?

(g) Provide the new "science" to support the redrawing and expansion of harbor seal haul out boundaries.

(h) Harbor seals are known to stay near the edge of a sandbar and at an edge or lip immediately adjacent to deep water (to avoid danger and facilitate immediate escape). The new map extends the haul out area to the interior of an approximately 4,000' by 3,000' island sandbar. Does NPS have new science that now shows that harbor seals prefer the interior of sandbars away from the safety of immediate access to deep water?

(i) Why was the haul out map altered – redrawn – in the middle of the harbor seal pupping season?

(j) Is the only change this year a boundary change on your new map or do you have evidence that oyster bags were moved into pupping areas or areas outside our CFDG designated growing areas?

(k) Did you mean to say that the NPS expanded the boundary on the harbor seal haul-out map and that this new altered map now included the historic oyster bag area?

(l) Why did NPS withhold this newly prepared seal haul out map from us?

(m) When did you provide this altered map to CDFG? And if it was not provided, why not?

(n) Did you inform the Marin County Board of Supervisors that the map submitted to them at a formal hearing deviated from the 1992 map used to establish protocols?

(4) With regard to the NPS statement that *"...oyster boats were observed scaring off seals in the area."*

(a) Please provide the data to support this statement. Indicate time, date and all relevant information pertaining to each incident.

(b) Provide all data in the NPS Inventory and Monitoring Harbor Seal database to support this statement.

(c) In the two and one-half years of DBOC ownership by our family, leading up to April 24, 2007, provide all records of harbor seal flushes (most serious of NPS-defined disturbances) by the oyster company operations during the March-to-May pupping season in the NPS database.

(d) During the two and one-half year period cited above to April 24, 2007, there were, according to the NPS database (to which NPS has restricted access by your decision) more than 2,000 recorded sightings of harbor seals getting flushed into the water by kayakers, hikers, recreational clammers, airplanes, predators and other sources. Provide, for that same period, the NPS database records that document harbor seals being flushed into the water by the DBOC oyster operation.

(5) With regard to the NPS statement that *"The park service said harbor seals declined from 250 to 50 in the area Lunny recently developed."*

(a) Does this statement refer to sandbar A?

(b) Do you have any data to show that this alleged decrease in harbor seals on sandbar A had anything to do with our oyster operation?

(c) Do you have any evidence to show that our oyster bags are located on sandbar A?

(d) Do you have any evidence to show that we recently developed our oyster operations on sandbar A?

(e) Are you aware that sandbar A is connected to the mainland?

(f) What are the major sources of disturbances, and in particular seal flushings, on sandbar A?

(g) Did you tell Peter Fimrite, the Chronicle reporter, that sandbar A is far outside the oyster operation's lease?

(h) Did you tell the reporter that we have never cultured oysters of any kind on sandbar A?

(i) Are you aware that our crews, boats and equipment have never been anywhere near sandbar A?

(j) Are you aware that, according to NPS records, park visitors, airplanes, and predators are the major source of disturbances at sandbar A? Was the reporter informed about this?

(k) Are you aware that, according to NPS records, the seals that abandoned sandbar A in 2007 appear to have moved a few hundred yards to the east side of sandbar/island UEN, the sandbar/island that they share with the oyster bags?

(l) Are you aware and did you inform the Chronicle that there is approximately 1,000' between oyster bags placed in the inter-tidal zone on sandbar UEN and where the harbor seals haul out (on the eastern lip of that same sandbar) – a distance of more than three football fields?

(m) Are you aware that, with regard to harbor seals and placement of oyster bags, we operate pursuant to a 1992 Federal-State, multi-agency set of protocols and those protocols allow us to operate within 100 yards of harbor seals during pupping season – and we maintain, as a practical operational matter, a distance that is more than three times greater than required?

(n) Did the harbor seal population decline 80% in an area where we operate – or, where we recently developed as NPS testified and reported in May 2007 and NPS has since repeated elsewhere?

(o) Don't the NPS records show that one sandbar declined by 80%, but the adjoining sandbar increased by a similar percentage?

(p) Aren't the overall harbor seal population numbers from 2005 to 2006 and then 2007 within the management objectives of the Pinniped Long-Term Monitoring Program protocols?

(q) A 25% harbor seal population reduction should have triggered a "management action." With your report of a purported 80% reduction, was a "management action" initiated last May? Are you directing that one be triggered today?

(6) A short time ago, you provided ABC/KGO Channel 7 in San Francisco, pursuant to a FOIA request, a copy of a one-page email dated April 24, 2007, from NPS to NOAA, copied to Superintendent Neubacher, stating that NPS had no direct observations of the DBOC oyster operation disturbing harbor seals.

(a) Did you provide that email to the Chronicle reporter? If not, why not?

(b) Did you inform the reporter that NPS had "no observations" of harbor seal disturbances through April 24, 2007 by DBOC recorded in the NPS Inventory and Monitoring database?

(c) Given the statement in the April 24 email, why did Superintendent Neubacher fail to include this critical piece of information to the Marin County Board of Supervisors at the May 8, 2007 hearing?

(d) As the Superintendent's direct supervisor, did you know that this information was being withheld from the Board of Supervisors and the public?

(e) Did your Regional Chief Scientist, David Graber, clear or approve Mr. Neubacher's testimony to the Board, and if so, was he aware of that, as of April 24, NPS had no observations of harbor seal disturbances?

(f) In retrospect, do you believe it was appropriate to withhold this information from the Board of Supervisors?

(g) Why did Superintendent Neubacher testify that this was a "national issue" if it was not, according to documents provided to him fourteen days prior to the hearing?

(h) Why was this information withheld from our company?

(i) Why is NPS, pursuant to your direction, insisting on "mitigation" in our pending Permit for impacts to harbor seals while, at the same time, you are releasing emails pursuant to FOIA requests that reveal NPS had "no observations?"

(j) What was NOAA's response to the NPS April 24 email?

(k) Why was this information withheld from CDFG?

(7) What information and documents did NPS provide to the Chronicle reporter and specifically, did that information include the NPS/PRNS Trip Reports of April 13 and April 26 both of which contain copies of the altered seal haul out map?

(a) If you did provide the Chronicle reporter with the April 13 or 26, 2007 Trip Reports, did you inform him that serious questions have been raised by us as to their authenticity?

(b) Did NPS also provide the Chronicle with the 1992 inter-agency harbor seal haul-out map?

(c) Did you tell him that you were provided a copy of a letter sent to the Coastal Commission which sets forth why the April 26 Trip Report cannot possibly be accurate.

(d) Did you tell him that you were informed that our white oyster boat was broken and was not on the Estero that day?

(e) Did the Chronicle reporter know that our employees had already clocked out for the day when some of these observations were supposedly being made?

(f) Was the reporter told that the April 26 Trip Report contains claims concerning seals getting flushed into the water that were not entered into the official NPS harbor seal database in violation of NPS protocols?

(g) Did the Chronicle reporter know that the NPS never mentioned this April 26 Trip Report in its May 8th testimony to the Marin County Board of Supervisors or in its May 11th version of the NPS Drakes Estero Report?

(h) Did you tell the reporter that the first time the April 26 Trip Report was referenced was in the September 11 report to the California Coastal Commission by Dr. John Dixon?

(i) Was the Chronicle reporter informed that the now-questionable April 26 Trip Report is the only harbor seal data referenced by Dr. John Dixon in the California Coastal Commission report of September 11?

(j) Moreover, did he know that Dr. John Dixon was apparently unaware that he too had been given a new map with an altered harbor seal haul-out boundary?

One final question – do you stand by the NPS Clarification letter from last September or are you withdrawing the retractions you made public at that time?

The NPS statements to the Chronicle are needlessly inflammatory, contradictory, and plainly wrong. You are either unfamiliar with your own NPS record in this matter or your actions are deliberate. We don't know which and will reserve judgment.

You issued the Clarification document; the so-called "rebuttal" to Dr. Goodman, even though Senator Feinstein directed you not to do so. In it, speaking for NPS, you retracted every categorical major accusation made against the Drakes Bay Oyster Company. Today, you overturn that which is already discredited – NPS statements, NPS testimony, and NPS reports. We are at a loss to understand what you are doing and saying, or understand why. We candidly admit – it makes no sense to us.

One thing is clear – these NPS management inconsistencies are harming our company and have repeatedly interfered with our ability to finalize action on pending permits or to move forward.

You are overturning or undermining almost every agreement reached at Olema. And, we are the object of NPS accusations, one after another. None right. None justified. To what end?

The Freedom of Information Act requests we submit to NPS are rarely answered, and if they are answered, are late and incomplete. You continue to withhold the 1973 – 1996 harbor seal data from Dr. Goodman incorrectly invoking inappropriate exemptions. In one, sent last October, we inquired as to the date the NPS' Drakes Estero Report was first published as it is undated. It was a simple, straight-forward uncomplicated and non-controversial inquiry. Two months later, the NPS response, signed by you, was, "*we are uncertain of what you mean by the word, 'publication'*".

And most recently, you submitted a proposal for an independent scientific review to the National Academy of Sciences that overturned the Olema directive. First, you excluded CDFG's Tom Moore. Then, after telling Dr. Goodman that all parties would go to the National Academy of Sciences together, you ignored that too. You submitted the NPS proposal without telling Dr. Goodman for two weeks. As for DBOC in the process, you elected to exclude us altogether. Worst of all, instead of an independent scientific investigation into the Drakes Estero Report, presentations and underlying science as directed at Olema and agreed to by all parties, you asked the National Academy of Sciences to investigate the Drakes Bay Oyster Company.

We are third generation family farmers at Drakes Estero. I have lived my entire life and we have raised our triplets here. Our love for the Point Reyes National Seashore is complete and total. This truly is one of the most beautiful places on this planet. It is also an ideal place to grow oysters and practice sustainable agriculture. Oysters are being reinstated and restored in Washington state, up and down the Atlantic Coast (especially in the Chesapeake Bay), and in the Gulf Coast. The "ecological services" provided by oysters are being recognized throughout our Nation except here. Three years ago, January 2005, our family purchased the oyster farm and spent a third of a million dollars cleaning up numerous problems at the farm and surrounding areas, including the Estero. These were legacy problems from the previous owner, not from the Lunny ownership. Prior to that purchase, we never had a cross word with the National Park Service.

That changed shortly after the purchase in January 2005. Since then, we feel like we have been constantly under attack.

Something is terribly wrong. Instead of resolving our differences, you are working overtime to make them worse. For that, our hearts are heavy. We are being treated unjustly. Our family is intimidated and fearful for our future and our financial survival.

If these questions are answered, fully and completely, it can be a starting point for progress. The choice is up to you.

Sincerely,

Kevin Lunny Nancy Lunny

cc: Peter Fimrite, San Francisco Chronicle
Lesley Guth, San Francisco Chronicle
John Diaz, San Francisco Chronicle

George Turnbull/OAKLAND/NPS
12/21/2007 04:04 PM

To Jon Jarvis/OAKLAND/NPS@NPS, "Kevin Lunny" <kevin@drakesbayoyster.com>, "Walton, Zachary R." <zacharywalton@paulhastings.com>
cc
bcc
Subject Next DBOC meeting re. SUP

Kevin/Zach,

Based on our most recent discussions, attached is a redline version of the current draft of the special use permit to reflect changes in "onshore" provisions. Hopefully you are available for our January 25 face-to-face meeting in Oakland (at 10 am). I also propose we have another conference call on either Monday January 14 (after 2 pm) or Tuesday January 15 (after 1 pm) to continue our "onshore" dialogue. Let me know if either of these dates work.

Hope you both have happy holidays....

George

DrakesBayOysterSUP Draft 12.21.07 -- redline shows difference with NPS 11.27.07 draft.pdf

UNITED STATES DEPARTMENT OF THE INTERIOR
National Park Service

Special Use Permit

Name of Use: Aquaculture

Date Permit Reviewed 2007
Reviewed 20
Reviewed 20
Expires November 30, 2012

Permit # MISC-8530-6000-8002
Type Park Code No. #

Long Term X
Short Term

Point Reyes National Seashore
Name of Area

Drakes Bay Oyster Company
17171 Sir Francis Drake Blvd.
Inverness, CA 94937
(415) 669-1149

is hereby authorized for a period ("Term") commencing on _____, 2007 ("Commencement Date") and terminating on November 30, 2012 ("Expiration Date") to use the following described land, improvements, and waters in the following area:

the lands and improvements at Drakes Bay Estero at the former Johnson's Oyster Site consisting of approximately 1.1 acres of land and improvements designated as the "SUP Area" on the map attached hereto as Exhibit B ("Drake's Estero Oysters – SUP & ROP"); and the waters designated as the "SUP Area" on the map attached hereto as Exhibit A ("Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area"); the land designated as the "Well Area" on the map attached hereto as Exhibit D ("Drakes Bay Oyster Company Well Area"); and the land designated as the "Sewage Area" on the map attached hereto as Exhibit E ("Drakes Bay Oyster Company Sewage Area"). ~~In addition, the Permitter intends to fence off some of the boundaries of the SUP Area shown on Exhibit B, and in the event of any conflict between Exhibit B and fencing provided by the Permitter, the fencing will control.~~ Collectively, the areas so designated shall be referred to as the "Premises." The Premises governed by this Permit do not include the area designated as the ROP Area on the map attached hereto as Exhibit B.

For the purpose(s) of:

Use of the area designated as the "SUP Area" on the map attached hereto as Exhibit B for the purpose of processing shellfish, the interpretation of shellfish cultivation to the visiting public, and residential purposes reasonably incidental thereto. Use of the area designated as the "SUP Area" on the map attached hereto as Exhibit A for the purpose of shellfish cultivation. Use of the area designated as the "Well Area" on the map attached hereto as Exhibit D for the purpose of supplying water for the Drakes Bay Oyster Company facilities using Permittee well, pump, and pipelines. Use of the area designated as the "Sewage Area" on the map attached hereto as Exhibit E for the purpose of use and maintenance of existing sewage pipeline and sewage leachfield to service the Drakes Bay Oyster Company facilities. Collectively, the uses set forth in this paragraph shall be referred to as the "Permitted Uses."

Authorizing legislation or other authority (RE – DO-53): 16 U.S.C. 1, 1a-1, 3 & 459c; the Reservation of Use and Occupancy.

NEPA & NHPA Compliance: NEPA compliance pending

PERFORMANCE BOND:	Required	Not Required X	Amount:
LIABILITY INSURANCE:	Required X	Not Required	Amount: As set forth in Article 15 of this Permit.

ISSUANCE of this Permit is subject to the terms, covenants, obligations, and reservations, expressed or implied herein and to the payment to the U.S. Dept. of the Interior, National Park Service of the sum of **$2,800.00** per year, plus an amount to be determined by appraisal for the use of the Sewage Area and the Well Area including water use.

PERMITTEE:_____

Signature | Organization | Date

Authorizing Official:_____ George Turnbull _____

Signature | Deputy Regional Director | Date

Additional Authorizing Official:_____

(If Required) Signature | Title | Date

LIST OF EXHIBITS

EXHIBIT A: Map – Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area

EXHIBIT B: Map – Drake's Estero Oysters – SUP & ROP

EXHIBIT C: Drakes Estero Aquaculture and Harbor Seal Protection Protocol

EXHIBIT D: Map – Drakes Bay Oyster Company Well Area

EXHIBIT E: Map – Drakes Bay Oyster Company Sewage Area

CONDITIONS OF THIS PERMIT

1) DEFINITIONS

As used in this Permit, the following terms shall have the following meanings:

a) "Agency" means any agency, department, commission, board, bureau, office or other governmental authority having jurisdiction.

b) "Applicable Laws" includes, without limitation all present and future statutes, regulations, requirements, Environmental Requirements, guidelines, judgments, or orders of any Agency or judicial body, whether now existing or hereafter established, relating to or affecting the Premises or the use or occupancy of the Premises.

c) "Commencement Date" is as defined on the Cover Page of this Permit.

d) "Cyclic Maintenance" means (i) the performance by Permittee of all repairs, maintenance, or replacement-in-kind necessary to maintain the Premises and the existing improvements thereon in good order, condition, and repair; (ii) housekeeping and routine and periodic work scheduled to mitigate wear and deterioration without materially altering the appearance of the Premises; (iii) the repair or replacement-in-kind of broken or worn-out elements, parts or surfaces so as to maintain the existing appearance of the Premises; and (iv) scheduled inspections of all building systems on the Premises.

e) "Default" means Permittee's failure to keep and perform any of the Provisions of this Permit.

f) "Environmental Requirements" means, without limitation, all standards or requirements relating to the protection of human health or the environment such as:

   a. standards or requirements pertaining to the reporting, permitting, management, monitoring, investigation or remediation of emissions, discharges, releases, or threatened emissions, releases or discharges of Hazardous Materials into the air, surface water, groundwater, or land;

   b. standards or requirements relating to the manufacture, handling, treatment, storage, disposal, or transport of Hazardous Materials; and

   c. standards or requirements pertaining to the health and safety of employees or the public.

g) "Expiration Date" is as defined on the Cover Page of this Permit.

h) "Hazardous Materials" means, without limitation, any material or substance, whether solid, liquid, or gaseous in nature,

   a. the presence of which requires reporting, permitting, management, monitoring, investigation or remediation under any Environmental Requirement;

   b. that is or becomes defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "pollutant," "discharge," "waste," "contaminant," or "toxic contaminant" under any Environmental Requirement, or any above-ground or underground storage containers for the foregoing;

   c. that is toxic, explosive, corrosive, flammable, infectious, radioactive, reactive, carcinogenic, mutagenic, or otherwise hazardous to human health or the environment and is or becomes regulated under any Environmental Requirement;

   d. that contains gasoline, diesel fuel or other petroleum hydrocarbons or derivatives or volatile organic compounds, or is an above-ground or underground storage container for same;

e. that contains polychlorinated biphenyls (PCBs), asbestos, asbestos-containing materials or urea formaldehyde foam insulation; or

f. that contains radon gas.

i) "Hazardous Materials Occurrence" means any use, generation, treatment, keeping, storage, transport, release, disposal, migration, or discharge of any Hazardous Materials from, on, under or into the Premises or Point Reyes National Seashore ("Point Reyes") that causes any environmental contamination.

j) "Improvements or Alterations" means any construction that does not fall within the definition of Cyclic Maintenance.

k) "NPS" means the management officials in charge of the administration and operation of Point Reyes, including the Superintendent or his/her designee(s).

l) "Park" means, without limitation, all lands, waters and structures within the legislative boundaries of the Point Reyes National Seashore, all natural and cultural resources within such boundaries, and any other property within such boundaries belonging to Point Reyes. As appropriate given the context, this term also includes the visiting public and/or Point Reyes employees.

m) "Permit" means this instrument which contains those certain termination and revocation provisions as provided for herein.

n) "Permitted Uses" is as defined on the Cover Page of this Permit.

o) "Personal Property" means all furniture, fixtures, equipment, appliances and apparatus placed on the Premises that neither are attached to nor form a part of the Premises. Personal Property also includes any trailers, modular units, and/or temporary structures owned by Permittee.

p) "Point Reyes" means Point Reyes National Seashore.

q) "Premises" is as defined on the Cover Page of this Permit.

r) "Provision" shall mean any term, agreement, covenant, condition or provision of this Permit or any combination of the foregoing.

s) "ROP" or "Reservation of Use and Occupancy" means the Reservation of Use and Occupancy purchased by the Permittee in 2005. In 1972 the United States of America purchased Johnson Oyster Company's property, subject to a Reservation of Use and Occupancy on approximately 1.5 of those acres for a period of forty (40) years. This Reservation of Use and Occupancy expires on November 30, 2012.

t) "SUP" means this Permit.

u) "Term" is as defined on the Cover Page of this Permit.

v) "Termination Date" means the Expiration Date or such earlier date as this Permit is terminated or revoked pursuant to any Provision of this Permit.

2) <u>GENERAL CONDITIONS</u>

a) The Permittee shall exercise this privilege subject to the supervision of the Superintendent, and shall comply with all Applicable Laws.

b) Permit and Approvals – Except as otherwise provided in this Permit, Permittee shall be responsible for obtaining, at its sole cost and expense, all necessary permits, approvals or other authorizations relating to Permittee's use and occupancy of the Premises.

c) Damages - The Permittee shall pay the United States for any damage resulting from this use which would not reasonably be inherent in the use which the Permittee is authorized to make of the land and areas described In this Permit.

d) Benefit - Neither Members of, nor Delegates to Congress, or Resident Commissioners shall be admitted to any share or part of this Permit or derive, either directly or indirectly any pecuniary benefits to arise therefrom: Provided, however, that nothing herein contained shall be construed to extend to any incorporated company if the Permit be for the benefit of such corporation.

e) Assignment and Subletting - This Permit may not be transferred or assigned without the consent of the Permitter, in writing. Permittee shall not sublet the Premises or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with this Permit without the prior written approval of the Permitter.

f) Revocation - This Permit may be terminated upon Default or at the discretion of the Permitter.

g) The Permittee is prohibited from giving false information; to do so will be considered a breach of conditions and be grounds for revocation [Re: 36 CFR 2.32(4)]

3) <u>USE OF PREMISES</u>

a) Permittee is authorized to use the Premises only for the Permitted Uses.

b) Permittee shall not engage in any activity that may be dangerous or harmful to persons, property, or the Park; that constitutes or results in waste or unreasonable annoyance (including, without limitation, signage and the use of loudspeakers or sound or light apparatus that could disturb park visitors and wildlife outside the Premises); that in any manner causes or results in a nuisance; or that is of a nature that it involves a substantial hazard, such as the manufacture or use of explosives, chemicals or products that may explode.

c) The Parties hereby acknowledge and agree that Permittee's covenant that the Premises shall be used as set forth in this Article 3 is material consideration for Permitter's agreement to enter into this Permit. The Parties further acknowledge and agree that any violation of said covenant shall constitute a Default under this Permit and that Permitter may inspect the premises at any time.

d) This Permit is subject to the right of the NPS to establish trails and other improvements and betterments over, upon, or through the Premises and further to the use by travelers and others of such established or existing roads and trails. The Permittee understands that occasional park visitors are authorized to walk, use non-motorized watercraft, or hike in the various areas included in this Permit even though no trails are formally established.

e) Permitter reserves the right for Permitter, its employees, contractors and agents to enter and to permit any Agency to enter upon the Premises for the purposes of inspection, inventory or when otherwise deemed appropriate by the Permitter for the protection of the interests of Permitter, including Permitter's interests in any natural or cultural resources located on, in or under the Premises.

f) Permitter reserves the right at any time to close to travel any of its lands, to erect and maintain gates at any point thereon, to regulate or prevent traffic of any kind thereon, to prescribe the methods of use thereof, and to maintain complete dominion over the same; provided, however, that at all times during the Term, Permitter shall provide Permittee and Permittee's invitees with reasonable access to the Premises subject only to interruptions caused by necessary maintenance or administrative operations or by matters beyond Permitter's control.

g) Permittee hereby waives any claim for damages for any injury, inconvenience to or interference with Permittee's use and occupancy of the Premises, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by Permitter's exercise of its rights under this Article 3 except to the extent that the damages, expenses, claims or suits result from the willful misconduct or gross negligence of Permitter, its employees, contractors or agents; provided, further, that Permitter shall be liable only to the extent such claims are allowed

under the Federal Tort Claims Act.

h) ~~Permittee's operations are to be set back on the shore a minimum of 50 feet from the mean high tide mark, excepting that area which is the subject of this Permit and that is described in the attached map (Exhibit B)~~Members of the general public visiting the Drakes Bay Oyster Company operation may park in the adjacent NPS parking area and walk over to the SUP or ROP areas.

i) While Permittee is permitted to use and operate motorized watercraft in Drakes Estero for the purpose of conducting daily business operations, which can include occasional inspections required by Agencies, no other use of Permittee's motorized watercraft is authorized. No motorized watercraft may enter the designated wilderness boundary (See "Existing Wilderness" on map attached hereto as Exhibit A). To protect water quality in the Estero, any additional or replacement boat motors obtained by Permittee must be four stroke motors.

j) Due to a lack of adequate parking space and restroom facilities for the public, barbecuing is not permitted in the Special Use Permit Area. To comply with this paragraph, Permittee will not encourage barbecuing in the SUP Area.~~; visitors may be directed to facilities located at Drakes Beach.~~ Picnic tables will be provided by the NPS at the adjacent parking area.

k) ~~No~~Unauthorized discharge into the estuary is prohibited~~permitted~~. This prohibition includes any discharge from processing facilities. Notwithstanding the foregoing, discharge of oyster wash water from dock and from hatchery operations is allowed if authorized by relevant Agencies.

l) In order to ensure public health and safety, Permittee will ensure that Permittee and Permittee's officers, agents, employees, and contractors comply with ~~no pets, including dogs and cats, shall be permitted in the Special Use Permit Area~~Applicable Laws regarding pets, including the NPS regulation at 36 C.F.R. § 2.15. ~~.~~

~~m)~~In order to ensure public health and safety, Permittee shall allow all appropriate Federal, State and/ or County agencies; including the United States Department of Health and Human Services, the State of California Department of Health Services and Marin County Community Development Agency Environmental Health Services, to conduct inspections on a routine basis.

m)

4) SPECIAL PERMIT CONDITIONS

a) Based upon the findings of an independent science review and/or NEPA compliance, Permitter reserves its right to modify the provisions of this Article 4. Permitter further reserves its right to incorporate new mitigation provisions based upon the findings of an independent science review.

i) The maximum annual production limit for oysters, rock scallops and clams will be 700,000 pounds.

ii) No additional aquaculture racks and/or cultivation infrastructure will be constructed. Operation, repair, and maintenance of infrastructure currently being used for oyster cultivation is permitted.

iii) Permittee and Permitter acknowledge the importance of eelgrass within the ecology of the estuary. Permittee will not place bags for shellfish production onto eelgrass.

iv) Within sixty (60) days following the signing of this interim Permit, Permittee will submit for National Park Service approval a boating operations plan, which will indicate dedicated navigation routes, chosen to minimize impacts to eelgrass beds when accessing aquaculture racks and/or cultivation equipment.

v) Permittee and Permitter acknowledge the importance of preventing the introduction of invasive species into the estuary. In order to control invasive species, Permittee will make every effort to ensure that no new species enter the estuary and to minimize the spread of invasive species as a result of Permittee's operations. Within sixty (60) days following the signing of this interim Permit, Permittee will submit for National Park Service approval an invasive species mitigation plan that includes best management practices (BMP's).

vi) Permittee will not introduce species of shellfish beyond those described in the existing leases from the California Department of Fish and Game ("CDFG"). Permittee may seek to conform and/or modify these leases with the CDFG. Any modifications approved by CDFG will be considered by Permitter on a case-by-case basis, and Permittee may not implement any such modifications without the prior written approval of the Permitter.

vii) Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites. The Marine Mammal Protection Act, 16 U.S.C. 1361 et seq., includes a prohibition against any act of pursuit, torment or annoyance that has the potential to injure or disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering. The National Oceanic and Atmospheric Administration (NOAA) recommends maintaining a distance of at least 100 yards to avoid disturbance to seals. Permittee will maintain a distance of at least 100 yards from seals throughout the year. Permitter will monitor marine mammal populations in Drakes Estero. In addition, during the pupping harbor seal closure period, March 1-June 30, the designated wilderness area (outside of Permit area) is closed to all boats. Permittee will follow "Drakes Estero Aquaculture and Harbor Seal Protection Protocol" attached hereto as Exhibit C. If required by CDHS, watercraft may use the Main Channel identified in Exhibit C during the pupping harbor seal closure period only to access CDHS's sentinel monitoring station for marine biotoxins. Boats shall be operated at low speed, near the eastern shore, to minimize chance of disturbance to harbor seals. No other use of the Main Channel or any other channel is authorized during the pupping harbor seal closure period.

viii) In order to avoid introduction of invasive species to Drakes Estero only oyster "seed" and not whole oysters may be imported. Seed must be obtained from regions approved by Permitter. At issuance of this Permit Washington, Oregon, and California are exclusively approved regions for obtaining oyster seed.

5) ACCEPTANCE OF PREMISES

a) Prior to entering into this Permit, Permittee has made a thorough, independent examination of the Premises and all matters relevant to Permittee's decision to enter into this Permit, and Permittee is thoroughly familiar with all aspects of the Premises and is satisfied that they are in an acceptable condition and meet Permittee's needs, provided that Permittee and Permitter acknowledge that certain repairs are necessary to comply with Applicable Laws. Permittee will make such repairs at its sole cost and expense in compliance with Applicable Laws.

b) Permittee expressly agrees to use and occupy the Premises and all improvements thereon in their existing "AS IS" condition "WITH ALL FAULTS" and acknowledges that in entering into this Permit, Permittee does not rely on, and Permitter does not make, any express or implied representations or warranties as to any matters including, without limitation, the suitability of the soil or subsoil; any characteristics of the Premises or improvements thereon; the suitability of the Premises for the approved use; the economic feasibility of Permittee's use and occupancy of the Premises; title to the Premises; the presence of Hazardous Materials in, on, under or in the vicinity of the Premises; or any other matter. Permittee has satisfied itself as to such suitability and other pertinent matters by Permittee's own inquiries and tests into all matters relevant to determining whether to enter into this Permit and Permittee hereby accepts the Premises.

6) CONSTRUCTION OF IMPROVEMENTS OR ALTERATIONS

a) Permittee may only make those Improvements or Alterations to the Premises that relate to Permittee's use of the Premises as specified in Article 3, "Use of the Premises."

b) Permittee shall not undertake any Improvements or Alterations to the Premises (including installation of temporary equipment or facilities) without the prior written approval of Permitter.

c) As a prerequisite to obtaining approval for Improvements or Alterations, Permittee, at Permittee's sole cost and expense, shall submit design plans and any other relevant data for Permitter's approval.

d) Construction of Improvements or Alterations by Permittee shall be performed in accordance with all Applicable

Laws, including but not limited to general planning, building, and environmental laws and approved design plans and shall be undertaken and completed at Permittee's sole cost and expense.

e) Permittee shall, upon request, furnish Permitter with a true and correct copy of any contract, and any modification or amendment thereof, with Permittee's contractors, architects, or any other consultants, engaged in connection with this Permit.

f) Any Improvements or Alterations undertaken by Permittee shall be performed in a good and workmanlike manner and with materials of a quality and standard acceptable to Permitter. Permittee shall also construct, install and maintain equipment and any construction facilities on the Premises in a safe and orderly manner.

g) Permittee shall not construct any Improvements or Alterations outside the boundaries of the Premises.

h) Permitter in its discretion is entitled to have on the Premises at any time during the construction of Improvements or Alterations an inspector or representative who shall be entitled to observe all aspects of the construction on the Premises.

i) All lumber utilized at the site will be processed in compliance with current laws and regulations regarding wood treatments. This includes lumber utilized in assembly and repair of aquaculture racks.

j) As set forth in Article 17, title to any Improvements or Alterations to the Premises shall be and remain solely in the Permitter.

7) TREATMENT OF REFUSE

a) Refuse shall be promptly removed from within the boundaries of Point Reyes National Seashore and shall be disposed of in accordance with Applicable Laws.

b) Permittee will make best efforts to remove debris associated with aquaculture production operations including wood from racks, plastic spacers, unused shellfish bags, shellfish shells, and any other associated items.

8) PESTICIDE AND HERBICIDE USE

a) The National Park Service utilizes Integrated Pest Management ("IPM") to treat pest and vegetation problems. The goal of IPM is to use the least-toxic, effective methods of controlling pests and vegetation. Except for normal household purposes, Permittee shall not use any pesticides that do not comply with the IPM program. To this end, Permittee shall submit in writing to Permitter, a request for the use of pesticide(s) or herbicide(s) and shall not use any pesticide(s) or herbicide(s) until Permittee has received an express written authorization therefor from Permitter.

b) Permittee shall manage, treat, generate, handle, store and dispose of all pesticides and herbicides in accordance with Applicable Laws, including reporting requirements.

9) FIRE PREVENTION AND SUPPRESION

a) Permittee and its employees, agents, and contractors shall, in Permittee's use and occupancy of the Premises, take all reasonable precautions to prevent forest, brush, grass, and structural fires and shall, if safety permits, assist the Permitter in extinguishing such fires on the Premises.

10) EXCAVATION, SITE AND GROUND DISTURBANCE

a) Permittee shall not cut, remove or alter any timber or any other landscape feature; conduct any mining or drilling operations; remove any sand, gravel or similar substances from the ground or watercourse; commit waste of any kind; or in any manner change the contour or condition of the Premises without the prior written approval of the Permitter. Except in emergencies, Permittee shall submit requests to conduct such activities in writing to the Permitter not less than sixty (60) days in advance of the proposed commencement date of any such activities.

b) If approval of activities referenced above in Section10(a) is granted, Permittee shall abide by all the terms and conditions of the approval, including provisions pertaining to archaeological resources.

c) No soil disturbance of any kind may occur in the vicinity of a known archeological site, without the presence of an NPS archeological monitor.

11) NONPOINT SOURCE POLLUTION

a) The Permittee shall comply with all Applicable Laws regarding non-point source pollution (including the protection of beneficial uses of waters as designated by the State of California). Further, Permittee's use and occupancy of the Premises shall be designed to minimize, to the greatest extent feasible, non-point source pollution within National Park Service boundaries or on adjacent lands.

b) As set forth in Section 3(km) of this Permit, no discharge into the estuary is permitted. This prohibition includes any discharge from processing facilities.

12) TREE AND VEGETATION REMOVAL

a) The Permittee may not remove tree(s) or vegetation unless expressly approved in writing by the Permitter. The Permittee shall provide specific plans to the Permitter for desired tree(s) and vegetation removal during the annual meeting or in writing during the Term of this Permit.

b) Removal of non-native invasive vegetation such as non-native thistles, trimming and vegetation removal around structures is permissible.

13) WILDLIFE PROTECTION

a) Wildlife is an integral part of Point Reyes National Seashore and must be managed in accordance with all Applicable Laws, including but not limited to NPS ~~legislation, the Code of Federal Regulations, and NPS policies, including but not limited to NPS Management Policies 2006, as such may be amended~~laws, regulations, and policies.

b) Permittee shall not engage in any activity that purposely causes harm or destroys any wildlife. Conversely, Permittee shall not engage in any activity that purposely supports or increases populations of non-native or invasive animal species, except for the cultivation of the shellfish species authorized by this Permit.

c) As set forth in Section 3(j) of this Permit, Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites.

d) On a case by case basis, the Permitter will evaluate incidences of depredation caused by Permittee and choose a course of action. The nature of the course of action will be determined by the extent and frequency of the damage, the wildlife species, and park-wide management objectives.

14) HAZARDOUS MATERIALS; ENVIRONMENTAL HEALTH AND SAFETY

a) In connection with this Permit, Permittee, its officers, agents, employees and contractors, shall not use, generate, sell, treat, keep, or store any Hazardous Materials on, about, under or into the Premises or elsewhere in Point Reyes except in compliance with all Applicable Laws and as approved in writing by Permitter. However, Permittee shall not be obligated to obtain Permitter's approval to use, keep, or generate Hazardous Materials as necessary for the normal operation or maintenance of vehicles or for standard household cleaners. Permittee agrees to be responsible for timely acquisition of any permit(s) required for its Hazardous Materials-related activities, and shall provide to the Permitter, upon request, inventories of all such Hazardous Materials and any supporting documentation, including but not limited to material safety data sheets, uniform waste manifest forms, and/or any other pertinent permits.

b) Permittee, its officers, agents, employees and contractors, shall not release, discharge or dispose of any Hazardous Materials from, on, about, under or into the Premises or elsewhere in Point Reyes, except as authorized by Applicable Laws.

c) If Permittee knows of or reasonably suspects or receives notice or other communication concerning any past, ongoing, or potential violation of Environmental Requirements in connection with the Premises or Permittee's activities, Permittee shall immediately inform Permitter and shall provide copies of any relevant documents to Permitter. Receipt of such information and documentation shall not be deemed to create any obligation on the part of the Permitter to defend or otherwise respond to any such notification.

d) If any Hazardous Materials Occurrence is caused by, arises from, or is exacerbated by the activities authorized under this Permit or by the use of the Premises by Permittee, its officers, agents, employees or contractors, Permittee shall promptly take all actions at its sole cost and expense as are required to comply with Applicable Laws and to allow the Premises and any other affected property to be used free of any use restriction that could be imposed under Applicable Laws; provided that, except in cases of emergency, Permitter's approval of such actions shall first be obtained.

e) The Permitter shall have the right, but not the duty, at all reasonable times and, except in the case of emergency, following at least twenty-four (24) hours advance notice to Permittee, to enter and to permit any Agency, public or private utilities and other entities and persons to enter upon the Premises, as may be necessary as determined by the Permitter in its sole discretion, to conduct inspections of the Premises, including invasive tests, to determine whether Permittee is complying with all Applicable Laws and to investigate the existence of any Hazardous Materials in, on or under the Premises. The Permitter shall have the right, but not the duty, to retain independent professional consultants to enter the Premises to conduct such inspections and to review any final report prepared by or for Permittee concerning such compliance. Upon Permittee's request, the Permitter will make available to Permittee copies of all final reports and written data obtained by the Permitter from such tests and investigations. Permittee shall have no claim for any injury or inconvenience to or interference with Permittee's use of the Premises or any other loss occasioned by inspections under this Section 14(e). Notwithstanding the foregoing, neither Permittee nor Permitter shall be required to provide a report under this Section 14(e) if such report is protected by attorney-client privilege.

f) Should Permittee, its officers, agents, employees or contractors, fail to perform or observe any of the obligations or agreements pertaining to Hazardous Materials or Environmental Requirements for a period of thirty (30) days (or such longer period of time as is reasonably required) after notice, then Permitter shall have the right, but not the duty, without limitation of any other rights of Permitter under this Permit, personally or through its agents, consultants or contractors to enter the Premises and perform the same. Permittee agrees to reimburse Permitter for the costs thereof and to indemnify Permitter as provided for in this Permit.

g) Permittee understands and acknowledges that the Premises may contain asbestos and lead-based paint. If Permittee performs any Improvements or Alterations, Permittee shall comply with all Environmental Requirements related to asbestos and lead-based paint and shall solely bear all costs associated therewith. Nothing in this Permit shall be construed to require Permittee to remove asbestos or lead-based paint unless Environmental Requirements require such removal.

h) Permittee shall indemnify, defend, save and hold Permitter, its employees, successors, agents and assigns, harmless from and against, and reimburse Permitter for, any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments, and expenses, including without limitation, consultant fees and expert fees, that arise during or after the Term as a result of any violation of any Environmental Requirement in connection with this Permit or any Hazardous Materials Occurrence in connection with this Permit.

i) The provisions of this Article 14 shall survive any termination or revocation of this Permit. Article 15 (Insurance) of this Permit shall not limit in any way Permittee's or Permitter's obligations under this Article 14.

15) INSURANCE

a) Permittee shall purchase the types and amounts of insurance described herein before the Commencement Date of this Permit unless otherwise specified. At the time such insurance coverage is purchased, Permittee shall provide Permitter with a statement of Permittee insurance describing the insurance coverage in effect and a Certificate of Insurance covering each policy in effect as evidence of compliance with this Permit. Permittee shall also provide the Permitter thirty (30) days advance written notice of any material change in the Permittee's insurance program hereunder. Permitter shall not be responsible for any omissions or inadequacies in insurance coverage or amounts in the event such coverage or amounts prove to be inadequate or otherwise insufficient for any reason whatsoever.

b) From time to time, as conditions in the insurance industry warrant, the Permitter reserves the right to revise the minimum insurance limits required in this Permit.

c) All insurance policies required by this Permit shall specify that the insurance company shall have no right of subrogation against the United States, except for claims arising solely from the negligence of the United States or its employees, or shall provide that the United States is named as an additional insured.

d) All insurance policies required herein shall contain a loss payable clause approved by the Permitter which requires insurance proceeds to be paid directly to the Permittee without requiring endorsement by the United States. Insurance proceeds covering any loss of the Premises but not used to replace such losses shall be promptly paid by Permittee to Permitter. The use of insurance proceeds for the repair, restoration or replacement of the Premises shall not give any ownership interest therein to Permittee.

e) Property Insurance: At a minimum, the Permittee shall be required to purchase Basic Form Actual Cash Value (replacement cost less depreciation) insurance coverage for all residence on the Premises. Within thirty days of issuance of the Permit, the Permittee shall submit a report from a reputable insurance company which provides a full range of options for insurance coverage on all nonresidential structures on the Premises. Within thirty days of receipt of this report, the Permitter, in its sole discretion, will review and specify the type and level of insurance coverage which shall be required. The Permitter will provide the Permittee written notification of insurance requirements and the Permittee shall be required to have the specified level(s) of insurance in place within thirty days of such notification. The cost of the insurance will be deducted from the appraised fair market value for the Premises; this adjustment and the insurance requirements will be addressed in an amendment to the Permit. Permittee shall, in the event of damage or destruction in whole or in part to the Premises, use all proceeds from the above described insurance policies to repair, restore, replace or remove those buildings, structures, equipment, furnishings, betterments or improvements determined by the Permitter, in Permitter's sole discretion, to be necessary to satisfactorily discharge the Permittee's obligations under this Permit.

f) Public Liability: The Permittee shall provide Comprehensive General Liability insurance against claims arising from or associated with Permittee's use and occupancy of the Premises. Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such use and occupancy, but in any event, the limits of such insurance shall not be less than $1,000,000.00 per occurrence covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, the Permittee shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a Comprehensive General Liability Policy, may be used to achieve the required limits.

g) Permittee shall also obtain the following additional coverage:

   i) Automobile Liability – To cover all owned, non-owned, and hired vehicles in the amount of $300,000.00.

   ii) Workers' Compensation – The amount shall be in accordance with that which is required by the State of California.

16) <u>INDEMNITY</u>

a) In addition to the indemnification contained in Article 14, Permittee shall indemnify, defend, save and hold Permitter, its employees, successors, agents and assigns, harmless from and against, and reimburse Permitter for, any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action,

judgments and expenses and the like incurred in connection with or arising in any way out of this Permit; the use or occupancy of the Premises by Permittee or its officers, agents, employees, or contractors; the design, construction, maintenance, or condition of any Improvements or Alterations; or any accident or occurrence on the Premises or elsewhere arising out of the use or occupancy of the Premises by Permittee or its officers, agents, employees, or contractors. Permittee's obligations hereunder shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably approved by Permitter), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against the United States.

b) Permitter agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States by third parties for personal injuries or property damage resulting from the negligent act or omission of any employee of the United States in the course of his or her employment.

c) This Article 16 shall survive any termination or revocation of this Permit. The provisions of Article 15 (Insurance) of this Permit shall not limit in any way Permittee's obligations under this Article 16.

17) PROPERTY INTEREST

a) This Permit shall vest in Permittee no property interest in the Premises or in the improvements thereon. Title to real property and improvements thereon, including any Improvements or Alterations constructed by Permittee, shall be and remain solely in Permitter. Except as provided in Paragraph 3(g), Permittee shall have no claim for any compensation or damages for the Premises, the improvements thereon, or any Improvements or Alterations constructed by the Permittee.

b) Nothing in this Permit shall give or be deemed to give Permittee an independent right to grant easements or other rights-of-way over, under, on, or through the Premises.

c) Permitter hereby retains the sole and exclusive right to oil, gas, hydrocarbons, and other minerals (of whatsoever character) in, on, or under the Premises.

18) RENTS, TAXES AND ASSESSMENTS

a) The annual rental rate for this Permit shall be established by Permitter and is set forth on the Cover Page of this Permit.

b) The annual rent under this Permit is payable in advance on a semi-annual basis. Therefore, Permittee hereby agrees to pay fifty percent of the annual rate on or before November with the remaining fifty percent payable on or before May of each year during the Term.

c) Permittee shall pay the proper Agency, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time during the Term of this Permit, are levied or assessed against the Premises.

d) Rents due hereunder shall be paid without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment or reduction.

19) CYCLIC MAINTENANCE

a) Permittee shall perform all Cyclic Maintenance in accordance with the Provisions of this Permit and at Permittee's sole cost and expense. Permittee is responsible for the maintenance of all fences, buildings, and other improvements upon the Premises. All improvements and facilities used and occupied by Permittee shall at all times be protected and maintained in a safe, sanitary and sightly condition.

b) Specific maintenance requirements may be negotiated with Permittee each year as outlined in Article 21 (Annual

Meeting).

c) Docks and Fences shall be maintained in good condition and shall be timely repaired in conformance with Applicable Laws ~~must be in good repair~~. Abandoned fences and other decrepit improvements shall be removed from the Premises and shall be disposed of outside the Park or as directed by Permitter after review and approval by the NPS Historian.

d) New ~~L~~lighting under Permittee's control of the Premises shall be redesigned to protect and preserve the night sky/darkness and minimize light pollution in Drakes Estero.

e) Parking areas shall be maintained in a safe condition and no new roads or truck trails shall be established without prior written permission of the Permitter. The main entrance road from Sir Francis Drake Boulevard to the SUP Area will be maintained by the NPS. The Park will respond in a timely manner to Permittee and/or visitor complaints regarding the condition of the main entrance road.

f) Existing water reservoirs shall be maintained in a safe and secure condition to prevent washouts and erosion and no new reservoirs shall be constructed or established without prior written approval of the Permitter.

g) Permittee shall maintain the water, well, pump and all pipelines within the Premises. ~~from the main line to the structures within the Premises.~~ Permittee shall replace or repair any damage or loss of the water system within the Premises.

h) Permittee shall maintain the sewage pipeline and sewage leachfield in the "Sewage Area."

~~h)~~i) Permittee shall be responsible for removing slash buildup around fences or other facilities within the Premises so as to prevent fire and egress hazards. Permittee shall also be responsible for removing litter and trash from the Premises.

20) COMPLIANCE WITH APPLICABLE LAWS; NEPA; NHPA

a) General Compliance: As provided for in this Permit, Permittee at its sole cost and expense shall promptly comply with all Applicable Laws. Permittee shall immediately notify Permitter of any notices received by or on behalf of Permittee regarding any alleged or actual violation(s) of or non-compliance with Applicable Laws. Permittee shall, at its sole cost and expense, promptly remediate or correct any violation(s) of Applicable Laws.

b) National Environmental Policy Act and National Historic Preservation Act: Where activities undertaken by Permittee relate to ~~require~~ the preparation of compliance documents pursuant to the National Environmental Policy Act ("NEPA") or the National Historic Preservation Act ("NHPA") ~~("Compliance Activity")~~, Permittee shall supply all necessary information to Permitter and any Agency in a timely manner. ~~If Permitter determines that the Compliance Activity is warranted,~~ Permitter will pay for the preparation of ~~e~~ NEPA or NHPA documents ~~as appropriate~~. If there is litigation regarding NEPA or NHPA compliance, it will not trigger the indemnification requirements of Article 16. ~~Permittee shall not implement any aspect of the Compliance Activity until all applicable NEPA and NHPA requirements have been met.~~

21) ANNUAL MEETING

a) The Parties shall meet annually each year during the Term of this Permit for the purposes of discussing and resolving issues of mutual concern and ensuring that Permittee is complying with the Provisions of this Permit. ~~Any proposed changes or modifications to this Permit which are required in order to meet National Park Service requirements or objectives shall be discussed and negotiated at the Annual Meeting. If National Park Service requirements or objectives require prompt attention, the date of the Annual Meeting may reasonably be changed by Permitter~~.

22) PROCEDURE IN CASE OF DEFAULT

[Drakes Bay Oyster Company to propose a provision.]

a) This Permit is made upon the express condition that if Permittee fails to keep and perform any of the Provisions of this Permit, this Permit shall become void at the option of Permitter, provided that Permitter shall first give Permittee thirty days written notice ("thirty day notification period") of Permitter's intention to revoke this Permit and regain possession of the Premises. The notice shall describe the specific Default and shall state Permitter's intention to reenter the Premises and declare this Permit forfeited if such Default continues. Such notice shall be served in the manner provided in Article 29 of this Permit.

b) The parties agree to meet promptly within the thirty day notification period to discuss the reasons for the notice and to try to resolve their differences.

c) If Permittee does not cure the Default or present a reasonable plan therefor within the thirty (30) day period, then Permitter shall be entitled to the possession of the Premises, and may enter into and upon the same or any part thereof and repossess the same and expel Permittee and those claiming through or under Permittee and remove their effects without being guilty of any manner of trespass and without any prejudice to any remedies that might otherwise be used for arrears of rent or preceding Default.

d) At the option of the Permitter, Permitter may, in lieu of voiding and terminating this Permit, assess a penalty of $50.00 per day for any failure by Permittee to keep and perform any of the Provisions of this Permit. In such case, Permittee shall be given notice in writing of a grace period (of from one to thirty days) to remedy the situation before a penalty will be assessed. Payment of any penalty under this provision shall not excuse Permittee from curing the Default. This provision shall not be construed as preventing Permitter from issuing citations or initiating enforcement proceedings under Applicable Laws.

23) SURRENDER AND VACATE THE PREMISES, RESTORATION

A) On the Termination Date of this Permit, Permittee shall surrender and vacate the Premises, remove Permittee's Personal Property therefrom, and repair any damage resulting from such removal. Subject to the approval of the Permitter, Permittee shall also return the Premises to as good order and condition (subject to ordinary wear and tear and damage that is not caused directly or indirectly by Permittee) as that existing upon the Effective Date.

b) All Permittee's Personal Property shall remain the property of Permittee. However, if after the Termination Date, Permittee shall fail satisfactorily to remove Permittee's Personal Property and so repair the Premises, then, at the Permitter's sole option, after notice to Permittee, Permittee's Personal Property, shall either become the property of the Permitter without compensation therefore, or the Permitter may cause it to be removed and the Premises to be repaired at the expense of Permittee, and no claim for damages against Permitter, its employees, agents or contractors shall be created or made on account of such removal or repair work.

24) LIMITATION ON EFFECT OF APPROVALS

a) All rights of Permitter to review, comment upon, approve, inspect or take any other action with respect to the use and occupancy of the Premises by Permittee, or any other matter, are expressly for the benefit of Permitter and no other party. No review, comment, approval or inspection, right or exercise of any right to perform Permitter's obligations, or similar action required or permitted by, of, or to Permitter under this Permit, or actions or omissions of Permitter's employees, contractors, or other agents, or other circumstances shall give or be deemed to give Permitter any liability, responsibility or obligation for, in connection with, or with respect to the operation of the Premises, nor shall any such approval, actions, information or circumstances relieve or be deemed to relieve Permittee of its obligations and responsibilities for the use and occupancy of the Premises as set forth in this Permit.

25) WAIVER NOT CONTINUING

a) The waiver of any Default, whether such waiver be expressed or implied, shall not be construed as a continuing waiver, or a wavier of or consent to any subsequent or prior breach of the same or any other provision of this

Permit. No waiver of any Default shall affect or alter this Permit, but each and every Provision of this Permit shall continue in full force and effect with respect to any other then existing or subsequent Default.

26) LIENS

a) Permittee shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion, fee interest or other estate of the Permitter or of any interest of the Permitter in the Premises. If any such lien shall at anytime be filed against the Premises or any portion thereof, Permittee shall cause the Permitter to be discharged from the lien.

27) HOLDING OVER

a) This Permit shall terminate upon the Termination Date and any holding over by Permittee after the Termination Date shall not constitute a renewal of this Permit or give Permittee any rights under this Permit or in or to the Premises.

28) NOTICES

a) Any notice or other communication required or permitted under this Permit shall be in writing and shall be delivered by hand or certified mail with return receipt requested. Notices and other communications shall be addressed as follows:

If to Permitter:

Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

If to Permittee:

Mr. Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

29) NO PARTNERSHIP OR JOINT VENTURE

a) Permitter is not for any purpose a partner or joint venturer of Permittee in the development or operation of the Premises or in any business conducted on the Premises. Permitter shall not under any circumstances be responsible or obligated for any losses or liabilities of Permittee.

30) ANTI-DEFICIENCY ACT

a) Permittee and Permitter agree that nothing contained in this Permit shall be construed as binding Permitter to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the subject matter of this Permit, or to involve Permitter in any contract or other obligation for the future expenditure of money in excess of such appropriations.

31) COMPLIANCE WITH EQUAL OPPORTUNITY LAWS

a) Permittee agrees that in undertaking all activities pursuant to this Permit, Permittee will comply with all Applicable Laws relating to non-discrimination.

32) ENTIRE AGREEMENT AND AMENDMENT

a) This instrument, together with the exhibits hereto, all of which are incorporated in this Permit by reference,

constitutes the entire agreement between Permitter and Permittee with respect to the subject matter of this Permit and supersedes all prior offers, negotiations, oral and written. This Permit may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Permitter and Permittee.

33) NO PAYMENTS BY PERMITTER

a) Under no circumstances or conditions, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall Permitter be expected or required to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability except as expressly set forth in this Permit.

34) NO THIRD PARTY BENEFICIARIES

a) Except as expressly set forth in this Permit, this Permit shall not be deemed to confer upon any person or entity, other than the parties to this Permit as expressly set forth in this Permit, any third party beneficiary status, any right to enforce any Provision of this Permit, or any other right or interest.

35) NO PREFERENTIAL RENEWAL AND RELOCATION ASSISTANCE

a) Permittee hereby agrees that Permittee is not a concessioner and that the provisions of law regarding National Park Service concessionaires do not apply to Permittee. No rights shall be acquired by virtue of this Permit entitling Permittee to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

36) SEVERABILITY

a) In case any one or more of the provisions of this Permit shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Permit, and this Permit shall be construed as if such invalid, illegal or unenforceable provisions had not been contained in this Permit.

37) EXHIBITS

a) Each of the exhibits referenced in this Permit is attached hereto and incorporated herein.

38) TIME OF THE ESSENCE

a) Time is hereby expressly declared to be of the essence of this Permit and of each and every Provision of this Permit.

39) HEADINGS

a) Article, Section and Subsection headings in this Permit are for convenience only and are not to be construed as a part of this Permit or in any way limiting or amplifying the Provisions of this Permit.

40) PERMIT CONSTRUED AS A WHOLE

a) The language in all parts of this Permit shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Permitter or Permittee. The Parties acknowledge that each party and its counsel have reviewed this Permit and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed or applied in the interpretation of this Permit.

41) MEANING OF TERMS

a) Whenever the context so requires, the neuter gender shall include the masculine and the feminine, and the

singular shall include the plural and vice versa.

42) FEDERAL LAW

a) The laws of the United States shall govern the validity, construction and effect of this Permit.

EXHIBIT A

Map – Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area

EXHIBIT B

Map – Drake's Estero Oysters – SUP & ROP

EXHIBIT C

Drakes Estero Aquaculture and Harbor Seal Protection Protocol

EXHIBIT D

Map – Drakes Bay Oyster Company Well Area

EXHIBIT E

Map – Drakes Bay Oyster Company Sewage Area

United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807

IN REPLY REFER TO:

NOV 2 8 2007

L1425 (PWR-DRD)

Kevin and Nancy Lunny
17171 Sir Francis Drake Boulevard
Inverness, CA 94937

Dear Kevin and Nancy Lunny:

Thank you for taking the time to speak with us on November 20, 2007 regarding finalizing negotiations for a special use permit for use of the estuary and shoreline in Drakes Estero. We are looking forward to meeting with you on December 3, 2007 to continue our negotiations. As we discussed, please find enclosed a draft of the special use permit for your consideration. This permit includes a revised harbor seal protocol as well as a revised provision regarding the term of the permit.

We look forward to meeting with you next Monday.

Sincerely,

Jonathan B. Jarvis
Regional Director, Pacific West Region

cc: George Turnbull, PWR-DRD
Don Neubacher, PWR-PORE
Suzanne Boyce-Carlson, SOL

TAKE PRIDE® IN AMERICA

UNITED STATES DEPARTMENT OF THE INTERIOR
National Park Service

Special Use Permit

Name of Use: Aquaculture

Date Permit Reviewed 2007
Reviewed 20
Reviewed 20
Expires November 30, 2012

Permit # MISC-8530-6000-8002
Type Park Code No.#

Long Term X
Short Term

Point Reyes National Seashore
Name of Area

Drakes Bay Oyster Company
17171 Sir Francis Drake Blvd.
Inverness, CA 94937
(415) 669-1149

is hereby authorized for a period ("Term") commencing on _____, 2007 ("Commencement Date") and terminating on November 30, 2012 ("Expiration Date") to use the following described land, improvements, and waters in the following area:

the lands and improvements at Drakes Bay Estero at the former Johnson's Oyster Site consisting of approximately 1.1 acres of land and improvements designated as the "SUP Area" on the map attached hereto as Exhibit B ("Drake's Estero Oysters – SUP & ROP") and the waters designated as the "SUP Area" on the map attached hereto as Exhibit A ("Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area"). In addition, the Permitter intends to fence off some of the boundaries of the SUP Area shown on Exhibit B, and in the event of any conflict between Exhibit B and fencing provided by the Permitter, the fencing will control. Collectively, the areas so designated shall be referred to as the "Premises."

For the purpose(s) of:

Use of the area designated as the "SUP Area" on the map attached hereto as Exhibit B for the purpose of processing shellfish, the interpretation of shellfish cultivation to the visiting public, and residential purposes reasonably incidental thereto. Use of the area designated as the "SUP Area" on the map attached hereto as Exhibit A for the purpose of shellfish cultivation. Collectively, the uses set forth in this paragraph shall be referred to as the "Permitted Uses."

Authorizing legislation or other authority (RE – DO-53): 16 U.S.C. 1, 1a-1, 3 & 459c; the Reservation of Use and Occupancy.

NEPA & NHPA Compliance: NEPA compliance pending

PERFORMANCE BOND:	Required	Not Required X	Amount:
LIABILITY INSURANCE:	Required X	Not Required	Amount: As set forth in Article 15 of this Permit.

ISSUANCE of this Permit is subject to the terms, covenants, obligations, and reservations, expressed or implied herein and to the payment to the U.S. Dept. of the Interior, National Park Service of the sum of $**2,800.00** per year.

PERMITTEE:_____
Signature Organization Date

Authorizing Official:_____ George Turnbull
Signature Deputy Regional Director Date

Additional Authorizing Official:_____

(If Required)	Signature	Title	Date

LIST OF EXHIBITS

EXHIBIT A: Map – Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area

EXHIBIT B: Map – Drake's Estero Oysters – SUP & ROP

EXHIBIT C: Drakes Estero Aquaculture and Harbor Seal Protection Protocol

CONDITIONS OF THIS PERMIT

1) DEFINITIONS

As used in this Permit, the following terms shall have the following meanings:

a) "Agency" means any agency, department, commission, board, bureau, office or other governmental authority having jurisdiction.

b) "Applicable Laws" includes, without limitation all present and future statutes, regulations, requirements, Environmental Requirements, guidelines, judgments, or orders of any Agency or judicial body, whether now existing or hereafter established, relating to or affecting the Premises or the use or occupancy of the Premises.

c) "Commencement Date" is as defined on the Cover Page of this Permit.

d) "Cyclic Maintenance" means (i) the performance by Permittee of all repairs, maintenance, or replacement-in-kind necessary to maintain the Premises and the existing improvements thereon in good order, condition, and repair; (ii) housekeeping and routine and periodic work scheduled to mitigate wear and deterioration without materially altering the appearance of the Premises; (iii) the repair or replacement-in-kind of broken or worn-out elements, parts or surfaces so as to maintain the existing appearance of the Premises; and (iv) scheduled inspections of all building systems on the Premises.

e) "Default" means Permittee's failure to keep and perform any of the Provisions of this Permit.

f) "Environmental Requirements" means, without limitation, all standards or requirements relating to the protection of human health or the environment such as:

a. standards or requirements pertaining to the reporting, permitting, management, monitoring, investigation or remediation of emissions, discharges, releases, or threatened emissions, releases or discharges of Hazardous Materials into the air, surface water, groundwater, or land;

b. standards or requirements relating to the manufacture, handling, treatment, storage, disposal, or transport of Hazardous Materials; and

c. standards or requirements pertaining to the health and safety of employees or the public.

g) "Expiration Date" is as defined on the Cover Page of this Permit.

h) "Hazardous Materials" means, without limitation, any material or substance, whether solid, liquid, or gaseous in nature,

a. the presence of which requires reporting, permitting, management, monitoring, investigation or remediation under any Environmental Requirement;

b. that is or becomes defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "pollutant," "discharge," "waste," "contaminant," or "toxic contaminant" under any Environmental Requirement, or any above-ground or underground storage containers for the foregoing;

c. that is toxic, explosive, corrosive, flammable, infectious, radioactive, reactive, carcinogenic, mutagenic, or otherwise hazardous to human health or the environment and is or becomes regulated under any Environmental Requirement;

d. that contains gasoline, diesel fuel or other petroleum hydrocarbons or derivatives or volatile organic compounds, or is an above-ground or underground storage container for same;

e. that contains polychlorinated biphenyls (PCBs), asbestos, asbestos-containing materials or urea formaldehyde foam insulation; or

f. that contains radon gas.

i) "Hazardous Materials Occurrence" means any use, generation, treatment, keeping, storage, transport, release, disposal, migration, or discharge of any Hazardous Materials from, on, under or into the Premises or Point Reyes National Seashore ("Point Reyes") that causes any environmental contamination.

j) "Improvements or Alterations" means any construction that does not fall within the definition of Cyclic Maintenance.

k) "NPS" means the management officials in charge of the administration and operation of Point Reyes, including the Superintendent or his/her designee(s).

l) "Park" means, without limitation, all lands, waters and structures within the legislative boundaries of the Point Reyes National Seashore, all natural and cultural resources within such boundaries, and any other property within such boundaries belonging to Point Reyes. As appropriate given the context, this term also includes the visiting public and/or Point Reyes employees.

m) "Permit" means this instrument which contains those certain termination and revocation provisions as provided for herein.

n) "Permitted Uses" is as defined on the Cover Page of this Permit.

o) "Personal Property" means all furniture, fixtures, equipment, appliances and apparatus placed on the Premises that neither are attached to nor form a part of the Premises. Personal Property also includes any trailers, modular units, and/or temporary structures owned by Permittee.

p) "Point Reyes" means Point Reyes National Seashore.

q) "Premises" is as defined on the Cover Page of this Permit.

r) "Provision" shall mean any term, agreement, covenant, condition or provision of this Permit or any combination of the foregoing.

s) "ROP" or "Reservation of Use and Occupancy" means the Reservation of Use and Occupancy purchased by the Permittee in 2005. In 1972 the United States of America purchased Johnson Oyster Company's property, subject to a Reservation of Use and Occupancy on approximately 1.5 of those acres for a period of forty (40) years. This Reservation of Use and Occupancy expires on November 30, 2012.

t) "SUP" means this Permit.

u) "Term" is as defined on the Cover Page of this Permit.

v) "Termination Date" means the Expiration Date or such earlier date as this Permit is terminated or revoked pursuant to any Provision of this Permit.

2) GENERAL CONDITIONS

a) The Permittee shall exercise this privilege subject to the supervision of the Superintendent, and shall comply with all Applicable Laws.

b) Permit and Approvals – Except as otherwise provided in this Permit, Permittee shall be responsible for obtaining, at its sole cost and expense, all necessary permits, approvals or other authorizations relating to Permittee's use and occupancy of the Premises.

c) Damages - The Permittee shall pay the United States for any damage resulting from this use which would not reasonably be inherent in the use which the Permittee is authorized to make of the land and areas described In this Permit.

d) Benefit - Neither Members of, nor Delegates to Congress, or Resident Commissioners shall be admitted to any share or part of this Permit or derive, either directly or indirectly any pecuniary benefits to arise therefrom: Provided, however, that nothing herein contained shall be construed to extend to any incorporated company if the Permit be for the benefit of such corporation.

e) Assignment and Subletting - This Permit may not be transferred or assigned without the consent of the Permitter, in writing. Permittee shall not sublet the Premises or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with this Permit without the prior written approval of the Permitter.

f) Revocation - This Permit may be terminated upon Default or at the discretion of the Permitter.

g) The Permittee is prohibited from giving false information; to do so will be considered a breach of conditions and be grounds for revocation [Re: 36 CFR 2.32(4)]

3) USE OF PREMISES

a) Permittee is authorized to use the Premises only for the Permitted Uses.

b) Permittee shall not engage in any activity that may be dangerous or harmful to persons, property, or the Park; that constitutes or results in waste or unreasonable annoyance (including, without limitation, signage and the use of loudspeakers or sound or light apparatus that could disturb park visitors and wildlife outside the Premises); that in any manner causes or results in a nuisance; or that is of a nature that it involves a substantial hazard, such as the manufacture or use of explosives, chemicals or products that may explode.

c) The Parties hereby acknowledge and agree that Permittee's covenant that the Premises shall be used as set forth in this Article 3 is material consideration for Permitter's agreement to enter into this Permit. The Parties further acknowledge and agree that any violation of said covenant shall constitute a Default under this Permit and that Permitter may inspect the premises at any time.

d) This Permit is subject to the right of the NPS to establish trails and other improvements and betterments over, upon, or through the Premises and further to the use by travelers and others of such established or existing roads and trails. The Permittee understands that occasional park visitors are authorized to walk, use non-motorized watercraft, or hike in the various areas included in this Permit even though no trails are formally established.

e) Permitter reserves the right for Permitter, its employees, contractors and agents to enter and to permit any Agency to enter upon the Premises for the purposes of inspection, inventory or when otherwise deemed appropriate by the Permitter for the protection of the interests of Permitter, including Permitter's interests in any natural or cultural resources located on, in or under the Premises.

f) Permitter reserves the right at any time to close to travel any of its lands, to erect and maintain gates at any point thereon, to regulate or prevent traffic of any kind thereon, to prescribe the methods of use thereof, and to maintain complete dominion over the same; provided, however, that at all times during the Term, Permitter shall provide Permittee and Permittee's invitees with reasonable access to the Premises subject only to interruptions caused by necessary maintenance or administrative operations or by matters beyond Permitter's control.

g) Permittee hereby waives any claim for damages for any injury, inconvenience to or interference with Permittee's use and occupancy of the Premises, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by Permitter's exercise of its rights under this Article 3 except to the extent that the damages, expenses, claims or suits result from the willful misconduct or gross negligence of Permitter, its employees, contractors or agents; provided, further, that Permitter shall be liable only to the extent such claims are allowed

under the Federal Tort Claims Act.

h) Permittee's operations are to be set back on the shore a minimum of 50 feet from the mean high tide mark, excepting that area which is the subject of this Permit and that is described in the attached map (Exhibit B).

i) While Permittee is permitted to use and operate motorized watercraft in Drakes Estero for the purpose of conducting daily business operations, no other use of Permittee's motorized watercraft is authorized. No motorized watercraft may enter the designated wilderness boundary (See "Existing Wilderness" on map attached hereto as Exhibit A). To protect water quality in the Estero, any additional or replacement boat motors obtained by Permittee must be four stroke motors.

j) Due to a lack of adequate parking space and restroom facilities for the public, barbecuing is not permitted in the Special Use Permit Area; visitors may be directed to facilities located at Drakes Beach. Picnic tables will be provided by the NPS at the adjacent parking area.

k) No discharge into the estuary is permitted. This prohibition includes any discharge from processing facilities. Notwithstanding the foregoing, discharge of oyster wash water from dock and from hatchery operations is allowed if authorized by relevant Agencies.

l) In order to ensure public health and safety, no pets, including dogs and cats, shall be permitted in the Special Use Permit Area.

m) In order to ensure public health and safety, Permittee shall allow all appropriate Federal, State and/ or County agencies; including the United States Department of Health and Human Services, the State of California Department of Health Services and Marin County Community Development Agency Environmental Health Services, to conduct inspections on a routine basis.

4) <u>SPECIAL PERMIT CONDITIONS</u>

a) Based upon the findings of an independent science review and/or NEPA compliance, Permitter reserves its right to modify the provisions of this Article 4. Permitter further reserves its right to incorporate new mitigation provisions based upon the findings of an independent science review.

i) The maximum annual production limit for oysters, rock scallops and clams will be 700,000 pounds.

ii) No additional aquaculture racks and/or cultivation infrastructure will be constructed. Operation, repair, and maintenance of infrastructure currently being used for oyster cultivation is permitted.

iii) Permittee and Permitter acknowledge the importance of eelgrass within the ecology of the estuary. Permittee will not place bags for shellfish production onto eelgrass.

iv) Within sixty (60) days following the signing of this interim Permit, Permittee will submit for National Park Service approval a boating operations plan, which will indicate dedicated navigation routes, chosen to minimize impacts to eelgrass beds when accessing aquaculture racks and/or cultivation equipment.

v) Permittee and Permitter acknowledge the importance of preventing the introduction of invasive species into the estuary. In order to control invasive species, Permittee will make every effort to ensure that no new species enter the estuary and to minimize the spread of invasive species as a result of Permittee's operations. Within sixty (60) days following the signing of this interim Permit, Permittee will submit for National Park Service approval an invasive species mitigation plan that includes best management practices (BMP's).

vi) Permittee will not introduce species of shellfish beyond those described in the existing leases from the California Department of Fish and Game ("CDFG"). Permittee may seek to conform and/or modify these leases with the CDFG. Any modifications approved by CDFG will be considered by Permitter on a case-by-case basis, and Permittee may not implement any such modifications without the prior written approval of the Permitter.

vii) Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites. The Marine Mammal Protection Act, 16 U.S.C. 1361 et seq., includes a prohibition against any act of pursuit, torment or annoyance that has the potential to injure or disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering. The National Oceanic and Atmospheric Administration (NOAA) recommends maintaining a distance of at least 100 yards to avoid disturbance to seals. Permittee will maintain a distance of at least 100 yards from seals throughout the year. Permitter will monitor marine mammal populations in Drakes Estero. In addition, during the pupping harbor seal closure period, March 1-June 30, the designated wilderness area (outside of Permit area) is closed to all boats. Permittee will follow "Drakes Estero Aquaculture and Harbor Seal Protection Protocol" attached hereto as Exhibit C. If required by CDHS, watercraft may use the Main Channel identified in Exhibit C during the pupping harbor seal closure period only to access CDHS's sentinel monitoring station for marine biotoxins. Boats shall be operated at low speed, near the eastern shore, to minimize chance of disturbance to harbor seals. No other use of the Main Channel or any other channel is authorized during the pupping harbor seal closure period.

viii) In order to avoid introduction of invasive species to Drakes Estero only oyster "seed" and not whole oysters may be imported. Seed must be obtained from regions approved by Permitter. At issuance of this Permit Washington, Oregon, and California are exclusively approved regions for obtaining oyster seed.

5) ACCEPTANCE OF PREMISES

a) Prior to entering into this Permit, Permittee has made a thorough, independent examination of the Premises and all matters relevant to Permittee's decision to enter into this Permit, and Permittee is thoroughly familiar with all aspects of the Premises and is satisfied that they are in an acceptable condition and meet Permittee's needs.

b) Permittee expressly agrees to use and occupy the Premises and all improvements thereon in their existing "AS IS" condition "WITH ALL FAULTS" and acknowledges that in entering into this Permit, Permittee does not rely on, and Permitter does not make, any express or implied representations or warranties as to any matters including, without limitation, the suitability of the soil or subsoil; any characteristics of the Premises or improvements thereon; the suitability of the Premises for the approved use; the economic feasibility of Permittee's use and occupancy of the Premises; title to the Premises; the presence of Hazardous Materials in, on, under or in the vicinity of the Premises; or any other matter. Permittee has satisfied itself as to such suitability and other pertinent matters by Permittee's own inquiries and tests into all matters relevant to determining whether to enter into this Permit and Permittee hereby accepts the Premises.

6) CONSTRUCTION OF IMPROVEMENTS OR ALTERATIONS

a) Permittee may only make those Improvements or Alterations to the Premises that relate to Permittee's use of the Premises as specified in Article 3, "Use of the Premises."

b) Permittee shall not undertake any Improvements or Alterations to the Premises (including installation of temporary equipment or facilities) without the prior written approval of Permitter.

c) As a prerequisite to obtaining approval for Improvements or Alterations, Permittee, at Permittee's sole cost and expense, shall submit design plans and any other relevant data for Permitter's approval.

d) Construction of Improvements or Alterations by Permittee shall be performed in accordance with all Applicable Laws, including but not limited to general planning, building, and environmental laws and approved design plans and shall be undertaken and completed at Permittee's sole cost and expense.

e) Permittee shall, upon request, furnish Permitter with a true and correct copy of any contract, and any modification or amendment thereof, with Permittee's contractors, architects, or any other consultants, engaged in connection with this Permit.

f) Any Improvements or Alterations undertaken by Permittee shall be performed in a good and workmanlike manner

and with materials of a quality and standard acceptable to Permitter. Permittee shall also construct, install and maintain equipment and any construction facilities on the Premises in a safe and orderly manner.

g) Permittee shall not construct any Improvements or Alterations outside the boundaries of the Premises.

h) Permitter in its discretion is entitled to have on the Premises at any time during the construction of Improvements or Alterations an inspector or representative who shall be entitled to observe all aspects of the construction on the Premises.

i) All lumber utilized at the site will be processed in compliance with current laws and regulations regarding wood treatments. This includes lumber utilized in assembly and repair of aquaculture racks.

j) As set forth in Article 17, title to any Improvements or Alterations to the Premises shall be and remain solely in the Permitter.

7) TREATMENT OF REFUSE

a) Refuse shall be promptly removed from within the boundaries of Point Reyes National Seashore and shall be disposed of in accordance with Applicable Laws.

b) Permittee will make best efforts to remove debris associated with aquaculture production operations including wood from racks, plastic spacers, unused shellfish bags, shellfish shells, and any other associated items.

8) PESTICIDE AND HERBICIDE USE

a) The National Park Service utilizes Integrated Pest Management ("IPM") to treat pest and vegetation problems. The goal of IPM is to use the least-toxic, effective methods of controlling pests and vegetation. Except for normal household purposes, Permittee shall not use any pesticides that do not comply with the IPM program. To this end, Permittee shall submit in writing to Permitter, a request for the use of pesticide(s) or herbicide(s) and shall not use any pesticide(s) or herbicide(s) until Permittee has received an express written authorization therefor from Permitter.

b) Permittee shall manage, treat, generate, handle, store and dispose of all pesticides and herbicides in accordance with Applicable Laws, including reporting requirements.

9) FIRE PREVENTION AND SUPPRESION

a) Permittee and its employees, agents, and contractors shall, in Permittee's use and occupancy of the Premises, take all reasonable precautions to prevent forest, brush, grass, and structural fires and shall, if safety permits, assist the Permitter in extinguishing such fires on the Premises.

10) EXCAVATION, SITE AND GROUND DISTURBANCE

a) Permittee shall not cut, remove or alter any timber or any other landscape feature; conduct any mining or drilling operations; remove any sand, gravel or similar substances from the ground or watercourse; commit waste of any kind; or in any manner change the contour or condition of the Premises without the prior written approval of the Permitter. Except in emergencies, Permittee shall submit requests to conduct such activities in writing to the Permitter not less than sixty (60) days in advance of the proposed commencement date of any such activities.

b) If approval of activities referenced above in Section10(a) is granted, Permittee shall abide by all the terms and conditions of the approval, including provisions pertaining to archaeological resources.

c) No soil disturbance of any kind may occur in the vicinity of a known archeological site.

11) NONPOINT SOURCE POLLUTION

a) The Permittee shall comply with all Applicable Laws regarding non-point source pollution (including the protection of beneficial uses of waters as designated by the State of California). Further, Permittee's use and occupancy of the Premises shall be designed to minimize, to the greatest extent feasible, non-point source pollution within National Park Service boundaries or on adjacent lands.

b) As set forth in Section 3(m) of this Permit, no discharge into the estuary is permitted. This prohibition includes any discharge from processing facilities.

12) TREE AND VEGETATION REMOVAL

a) The Permittee may not remove tree(s) or vegetation unless expressly approved in writing by the Permitter. The Permittee shall provide specific plans to the Permitter for desired tree(s) and vegetation removal during the annual meeting or in writing during the Term of this Permit.

b) Removal of non-native invasive vegetation such as non-native thistles, trimming and vegetation removal around structures is permissible.

13) WILDLIFE PROTECTION

a) Wildlife is an integral part of Point Reyes National Seashore and must be managed in accordance with all Applicable Laws, including but not limited to NPS legislation, the Code of Federal Regulations, and NPS policies, including but not limited to NPS Management Policies 2006, as such may be amended.

b) Permittee shall not engage in any activity that purposely causes harm or destroys any wildlife. Conversely, Permittee shall not engage in any activity that purposely supports or increases populations of non-native or invasive animal species.

c) As set forth in Section 3(j) of this Permit, Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites.

d) On a case by case basis, the Permitter will evaluate incidences of depredation and choose a course of action. The nature of the course of action will be determined by the extent and frequency of the damage, the wildlife species, and park-wide management objectives.

14) HAZARDOUS MATERIALS; ENVIRONMENTAL HEALTH AND SAFETY

a) In connection with this Permit, Permittee, its officers, agents, employees and contractors, shall not use, generate, sell, treat, keep, or store any Hazardous Materials on, about, under or into the Premises or elsewhere in Point Reyes except in compliance with all Applicable Laws and as approved in writing by Permitter. However, Permittee shall not be obligated to obtain Permitter's approval to use, keep, or generate Hazardous Materials as necessary for the normal operation or maintenance of vehicles. Permittee agrees to be responsible for timely acquisition of any permit(s) required for its Hazardous Materials-related activities, and shall provide to the Permitter, upon request, inventories of all such Hazardous Materials and any supporting documentation, including but not limited to material safety data sheets, uniform waste manifest forms, and/or any other pertinent permits.

b) Permittee, its officers, agents, employees and contractors, shall not release, discharge or dispose of any Hazardous Materials from, on, about, under or into the Premises or elsewhere in Point Reyes.

c) If Permittee knows of or reasonably suspects or receives notice or other communication concerning any past, ongoing, or potential violation of Environmental Requirements in connection with the Premises or Permittee's activities, Permittee shall immediately inform Permitter and shall provide copies of any relevant documents to Permitter. Receipt of such information and documentation shall not be deemed to create any obligation on the part of the Permitter to defend or otherwise respond to any such notification.

d) If any Hazardous Materials Occurrence is caused by, arises from, or is exacerbated by the activities authorized under this Permit or by the use of the Premises by Permittee, its officers, agents, employees or contractors,

Permittee shall promptly take all actions at its sole cost and expense as are required to comply with Applicable Laws and to allow the Premises and any other affected property to be used free of any use restriction that could be imposed under Applicable Laws; provided that, except in cases of emergency, Permitter's approval of such actions shall first be obtained.

e) The Permitter shall have the right, but not the duty, at all reasonable times and, except in the case of emergency, following at least twenty-four (24) hours advance notice to Permittee, to enter and to permit any Agency, public or private utilities and other entities and persons to enter upon the Premises, as may be necessary as determined by the Permitter in its sole discretion, to conduct inspections of the Premises, including invasive tests, to determine whether Permittee is complying with all Applicable Laws and to investigate the existence of any Hazardous Materials in, on or under the Premises. The Permitter shall have the right, but not the duty, to retain independent professional consultants to enter the Premises to conduct such inspections and to review any report prepared by or for Permittee concerning such compliance. Upon Permittee's request, the Permitter will make available to Permittee copies of all final reports and written data obtained by the Permitter from such tests and investigations. Permittee shall have no claim for any injury or inconvenience to or interference with Permittee's use of the Premises or any other loss occasioned by inspections under this Section 14(e).

f) Should Permittee, its officers, agents, employees or contractors, fail to perform or observe any of the obligations or agreements pertaining to Hazardous Materials or Environmental Requirements for a period of thirty (30) days (or such longer period of time as is reasonably required) after notice, then Permitter shall have the right, but not the duty, without limitation of any other rights of Permitter under this Permit, personally or through its agents, consultants or contractors to enter the Premises and perform the same. Permittee agrees to reimburse Permitter for the costs thereof and to indemnify Permitter as provided for in this Permit.

g) Permittee understands and acknowledges that the Premises may contain asbestos and lead-based paint. If Permittee performs any Improvements or Alterations, Permittee shall comply with all Environmental Requirements related to asbestos and lead-based paint and shall solely bear all costs associated therewith. Nothing in this Permit shall be construed to require Permittee to remove asbestos or lead-based paint unless Environmental Requirements require such removal.

h) Permittee shall indemnify, defend, save and hold Permitter, its employees, successors, agents and assigns, harmless from and against, and reimburse Permitter for, any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments, and expenses, including without limitation, consultant fees and expert fees, that arise during or after the Term as a result of any violation of any Environmental Requirement in connection with this Permit or any Hazardous Materials Occurrence in connection with this Permit.

i) The provisions of this Article 14 shall survive any termination or revocation of this Permit. Article 15 (Insurance) of this Permit shall not limit in any way Permittee's or Permitter's obligations under this Article 14.

15) <u>INSURANCE</u>

a) Permittee shall purchase the types and amounts of insurance described herein before the Commencement Date of this Permit unless otherwise specified. At the time such insurance coverage is purchased, Permittee shall provide Permitter with a statement of Permittee insurance describing the insurance coverage in effect and a Certificate of Insurance covering each policy in effect as evidence of compliance with this Permit. Permittee shall also provide the Permitter thirty (30) days advance written notice of any material change in the Permittee's insurance program hereunder. Permitter shall not be responsible for any omissions or inadequacies in insurance coverage or amounts in the event such coverage or amounts prove to be inadequate or otherwise insufficient for any reason whatsoever.

b) From time to time, as conditions in the insurance industry warrant, the Permitter reserves the right to revise the minimum insurance limits required in this Permit.

c) All insurance policies required by this Permit shall specify that the insurance company shall have no right of subrogation against the United States, except for claims arising solely from the negligence of the United States or

its employees, or shall provide that the United States is named as an additional insured.

d) All insurance policies required herein shall contain a loss payable clause approved by the Permitter which requires insurance proceeds to be paid directly to the Permittee without requiring endorsement by the United States. Insurance proceeds covering any loss of the Premises but not used to replace such losses shall be promptly paid by Permittee to Permitter. The use of insurance proceeds for the repair, restoration or replacement of the Premises shall not give any ownership interest therein to Permittee.

e) Property Insurance: At a minimum, the Permittee shall be required to purchase Basic Form Actual Cash Value (replacement cost less depreciation) insurance coverage for all residence on the Premises. Within thirty days of issuance of the Permit, the Permittee shall submit a report from a reputable insurance company which provides a full range of options for insurance coverage on all nonresidential structures on the Premises. Within thirty days of receipt of this report, the Permitter, in its sole discretion, will review and specify the type and level of insurance coverage which shall be required. The Permitter will provide the Permittee written notification of insurance requirements and the Permittee shall be required to have the specified level(s) of insurance in place within thirty days of such notification. The cost of the insurance will be deducted from the appraised fair market value for the Premises; this adjustment and the insurance requirements will be addressed in an amendment to the Permit. Permittee shall, in the event of damage or destruction in whole or in part to the Premises, use all proceeds from the above described insurance policies to repair, restore, replace or remove those buildings, structures, equipment, furnishings, betterments or improvements determined by the Permitter, in Permitter's sole discretion, to be necessary to satisfactorily discharge the Permittee's obligations under this Permit.

f) Public Liability: The Permittee shall provide Comprehensive General Liability insurance against claims arising from or associated with Permittee's use and occupancy of the Premises. Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such use and occupancy, but in any event, the limits of such insurance shall not be less than $1,000,000.00 per occurrence covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, the Permittee shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a Comprehensive General Liability Policy, may be used to achieve the required limits.

g) Permittee shall also obtain the following additional coverage:

   i) Automobile Liability – To cover all owned, non-owned, and hired vehicles in the amount of $300,000.00.

   ii) Workers' Compensation – The amount shall be in accordance with that which is required by the State of California.

16) <u>INDEMNITY</u>

a) In addition to the indemnification contained in Article 14, Permittee shall indemnify, defend, save and hold Permitter, its employees, successors, agents and assigns, harmless from and against, and reimburse Permitter for, any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments and expenses and the like incurred in connection with or arising in any way out of this Permit; the use or occupancy of the Premises by Permittee or its officers, agents, employees, or contractors; the design, construction, maintenance, or condition of any Improvements or Alterations; or any accident or occurrence on the Premises or elsewhere arising out of the use or occupancy of the Premises by Permittee or its officers, agents, employees, or contractors. Permittee's obligations hereunder shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably approved by Permitter), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against the United States.

b) Permitter agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States by third parties for personal injuries or property damage resulting from the negligent act or omission of any employee of the United States in the course of his or her employment.

c) This Article 16 shall survive any termination or revocation of this Permit. The provisions of Article 15 (Insurance) of this Permit shall not limit in any way Permittee's obligations under this Article 16.

17) PROPERTY INTEREST

a) This Permit shall vest in Permittee no property interest in the Premises or in the improvements thereon. Title to real property and improvements thereon, including any Improvements or Alterations constructed by Permittee, shall be and remain solely in Permitter. Permittee shall have no claim for any compensation or damages for the Premises, the improvements thereon, or any Improvements or Alterations constructed by the Permittee.

b) Nothing in this Permit shall give or be deemed to give Permittee an independent right to grant easements or other rights-of-way over, under, on, or through the Premises.

c) Permitter hereby retains the sole and exclusive right to oil, gas, hydrocarbons, and other minerals (of whatsoever character) in, on, or under the Premises.

18) RENTS, TAXES AND ASSESSMENTS

a) The annual rental rate for this Permit shall be established by Permitter and is set forth on the Cover Page of this Permit.

b) The annual rent under this Permit is payable in advance on a semi-annual basis. Therefore, Permittee hereby agrees to pay fifty percent of the annual rate on or before November with the remaining fifty percent payable on or before May of each year during the Term.

c) Permittee shall pay the proper Agency, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time during the Term of this Permit, are levied or assessed against the Premises.

d) Rents due hereunder shall be paid without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment or reduction.

19) CYCLIC MAINTENANCE

a) Permittee shall perform all Cyclic Maintenance in accordance with the Provisions of this Permit and at Permittee's sole cost and expense. Permittee is responsible for the maintenance of all fences, buildings, and other improvements upon the Premises. All improvements and facilities used and occupied by Permittee shall at all times be protected and maintained in a safe, sanitary and sightly condition.

b) Specific maintenance requirements may be negotiated with Permittee each year as outlined in Article 21 (Annual Meeting).

c) Docks and Fences must be in good repair. Abandoned fences and other decrepit improvements shall be removed from the Premises and shall be disposed of outside the Park or as directed by Permitter after review and approval by the NPS Historian.

d) Lighting of the Premises shall be redesigned to protect and preserve the night sky/darkness and minimize light pollution in Drakes Estero.

e) Parking areas shall be maintained in a safe condition and no new roads or truck trails shall be established without prior written permission of the Permitter. The main entrance road will be maintained by the NPS.

f) Existing water reservoirs shall be maintained in a safe and secure condition to prevent washouts and erosion and no new reservoirs shall be constructed or established without prior written approval of the Permitter.

g) Permittee shall maintain the water, well, pump and all pipelines from the main line to the structures within the

Premises. Permittee shall replace or repair any damage or loss of the water system within the Premises.

h) Permittee shall be responsible for removing slash buildup around fences or other facilities within the Premises so as to prevent fire and egress hazards. Permittee shall also be responsible for removing litter and trash from the Premises.

20) COMPLIANCE WITH APPLICABLE LAWS; NEPA, NHPA

a) General Compliance: As provided for in this Permit, Permittee at its sole cost and expense shall promptly comply with all Applicable Laws. Permittee shall immediately notify Permitter of any notices received by or on behalf of Permittee regarding any alleged or actual violation(s) of or non-compliance with Applicable Laws. Permittee shall, at its sole cost and expense, promptly remediate or correct any violation(s) of Applicable Laws.

b) National Environmental Policy Act and National Historic Preservation Act: Where activities undertaken by Permittee require the preparation of compliance documents pursuant to the National Environmental Policy Act ("NEPA") or the National Historic Preservation Act ("NHPA") ("Compliance Activity"), Permittee shall supply all necessary information to Permitter and any Agency in a timely manner. If Permitter determines that the Compliance Activity is warranted, Permitter will prepare NEPA or NHPA documents as appropriate. Permittee shall not implement any aspect of the Compliance Activity until all applicable NEPA and NHPA requirements have been met.

21) ANNUAL MEETING

a) The Parties shall meet annually each year during the Term of this Permit for the purposes of discussing and resolving issues of mutual concern and ensuring that Permittee is complying with the Provisions of this Permit. Any proposed changes or modifications to this Permit which are required in order to meet National Park Service requirements or objectives shall be discussed and negotiated at the Annual Meeting. If National Park Service requirements or objectives require prompt attention, the date of the Annual Meeting may reasonably be changed by Permitter.

22) PROCEDURE IN CASE OF DEFAULT

a) This Permit is made upon the express condition that if Permittee fails to keep and perform any of the Provisions of this Permit, this Permit shall become void at the option of Permitter, provided that Permitter shall first give Permittee thirty days written notice ("thirty day notification period") of Permitter's intention to revoke this Permit and regain possession of the Premises. The notice shall describe the specific Default and shall state Permitter's intention to reenter the Premises and declare this Permit forfeited if such Default continues. Such notice shall be served in the manner provided in Article 29 of this Permit.

b) The parties agree to meet promptly within the thirty day notification period to discuss the reasons for the notice and to try to resolve their differences.

c) If Permittee does not cure the Default or present a reasonable plan therefor within the thirty (30) day period, then Permitter shall be entitled to the possession of the Premises, and may enter into and upon the same or any part thereof and repossess the same and expel Permittee and those claiming through or under Permittee and remove their effects without being guilty of any manner of trespass and without any prejudice to any remedies that might otherwise be used for arrears of rent or preceding Default.

d) At the option of the Permitter, Permitter may, in lieu of voiding and terminating this Permit, assess a penalty of $50.00 per day for any failure by Permittee to keep and perform any of the Provisions of this Permit. In such case, Permittee shall be given notice in writing of a grace period (of from one to thirty days) to remedy the situation before a penalty will be assessed. Payment of any penalty under this provision shall not excuse Permittee from curing the Default. This provision shall not be construed as preventing Permitter from issuing citations or initiating enforcement proceedings under Applicable Laws.

23) SURRENDER AND VACATE THE PREMISES, RESTORATION

A) On the Termination Date of this Permit, Permittee shall surrender and vacate the Premises, remove Permittee's Personal Property therefrom, and repair any damage resulting from such removal. Subject to the approval of the Permitter, Permittee shall also return the Premises to as good order and condition (subject to ordinary wear and tear and damage that is not caused directly or indirectly by Permittee) as that existing upon the Effective Date.

b) All Permittee's Personal Property shall remain the property of Permittee. However, if after the Termination Date, Permittee shall fail satisfactorily to remove Permittee's Personal Property and so repair the Premises, then, at the Permitter's sole option, after notice to Permittee, Permittee's Personal Property, shall either become the property of the Permitter without compensation therefore, or the Permitter may cause it to be removed and the Premises to be repaired at the expense of Permittee, and no claim for damages against Permitter, its employees, agents or contractors shall be created or made on account of such removal or repair work.

24) LIMITATION ON EFFECT OF APPROVALS

a) All rights of Permitter to review, comment upon, approve, inspect or take any other action with respect to the use and occupancy of the Premises by Permittee, or any other matter, are expressly for the benefit of Permitter and no other party. No review, comment, approval or inspection, right or exercise of any right to perform Permitter's obligations, or similar action required or permitted by, of, or to Permitter under this Permit, or actions or omissions of Permitter's employees, contractors, or other agents, or other circumstances shall give or be deemed to give Permitter any liability, responsibility or obligation for, in connection with, or with respect to the operation of the Premises, nor shall any such approval, actions, information or circumstances relieve or be deemed to relieve Permittee of its obligations and responsibilities for the use and occupancy of the Premises as set forth in this Permit.

25) WAIVER NOT CONTINUING

a) The waiver of any Default, whether such waiver be expressed or implied, shall not be construed as a continuing waiver, or a wavier of or consent to any subsequent or prior breach of the same or any other provision of this Permit. No waiver of any Default shall affect or alter this Permit, but each and every Provision of this Permit shall continue in full force and effect with respect to any other then existing or subsequent Default.

26) LIENS

a) Permittee shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion, fee interest or other estate of the Permitter or of any interest of the Permitter in the Premises. If any such lien shall at anytime be filed against the Premises or any portion thereof, Permittee shall cause the Permitter to be discharged from the lien.

27) HOLDING OVER

a) This Permit shall terminate upon the Termination Date and any holding over by Permittee after the Termination Date shall not constitute a renewal of this Permit or give Permittee any rights under this Permit or in or to the Premises.

28) NOTICES

a) Any notice or other communication required or permitted under this Permit shall be in writing and shall be delivered by hand or certified mail with return receipt requested. Notices and other communications shall be addressed as follows:

If to Permitter:

Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

If to Permittee:

Mr. Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

29) NO PARTNERSHIP OR JOINT VENTURE

a) Permitter is not for any purpose a partner or joint venturer of Permittee in the development or operation of the Premises or in any business conducted on the Premises. Permitter shall not under any circumstances be responsible or obligated for any losses or liabilities of Permittee.

30) ANTI-DEFICIENCY ACT

a) Permittee and Permitter agree that nothing contained in this Permit shall be construed as binding Permitter to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the subject matter of this Permit, or to involve Permitter in any contract or other obligation for the future expenditure of money in excess of such appropriations.

31) COMPLIANCE WITH EQUAL OPPORTUNITY LAWS

a) Permittee agrees that in undertaking all activities pursuant to this Permit, Permittee will comply with all Applicable Laws relating to non-discrimination.

32) ENTIRE AGREEMENT AND AMENDMENT

a) This instrument, together with the exhibits hereto, all of which are incorporated in this Permit by reference, constitutes the entire agreement between Permitter and Permittee with respect to the subject matter of this Permit and supersedes all prior offers, negotiations, oral and written. This Permit may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Permitter and Permittee.

33) NO PAYMENTS BY PERMITTER

a) Under no circumstances or conditions, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall Permitter be expected or required to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability except as expressly set forth in this Permit.

34) NO THIRD PARTY BENEFICIARIES

a) Except as expressly set forth in this Permit, this Permit shall not be deemed to confer upon any person or entity, other than the parties to this Permit as expressly set forth in this Permit, any third party beneficiary status, any right to enforce any Provision of this Permit, or any other right or interest.

35) NO PREFERENTIAL RENEWAL AND RELOCATION ASSISTANCE

a) Permittee hereby agrees that Permittee is not a concessioner and that the provisions of law regarding National Park Service concessionaires do not apply to Permittee. No rights shall be acquired by virtue of this Permit entitling Permittee to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition

Policies Act of 1970, Public Law 91-646.

36) SEVERABILITY

a) In case any one or more of the provisions of this Permit shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Permit, and this Permit shall be construed as if such invalid, illegal or unenforceable provisions had not been contained in this Permit.

37) EXHIBITS

a) Each of the exhibits referenced in this Permit is attached hereto and incorporated herein.

38) TIME OF THE ESSENCE

a) Time is hereby expressly declared to be of the essence of this Permit and of each and every Provision of this Permit.

39) HEADINGS

a) Article, Section and Subsection headings in this Permit are for convenience only and are not to be construed as a part of this Permit or in any way limiting or amplifying the Provisions of this Permit.

40) PERMIT CONSTRUED AS A WHOLE

a) The language in all parts of this Permit shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Permitter or Permittee. The Parties acknowledge that each party and its counsel have reviewed this Permit and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed or applied in the interpretation of this Permit.

41) MEANING OF TERMS

a) Whenever the context so requires, the neuter gender shall include the masculine and the feminine, and the singular shall include the plural and vice versa.

42) FEDERAL LAW

a) The laws of the United States shall govern the validity, construction and effect of this Permit.

Drakes Estero Aquaculture and
Harbor Seal Protection Protocol

The following items are mutually agreed to for protection of harbor seals in and adjacent to the Harbor Seal Haul-Out Zones identified in the Map entitled, "Drake's Estero Aquaculture & Seal Protection Zones," attached hereto and incorporated herein by reference ("Protocol Map"):

1. During the breeding season, March 1 through June 30, the "Main Channel" and "Lateral Channel" of Drakes Estero will be closed to boat traffic.[a] The channels and other areas discussed in this Protocol are identified on the Protocol Map.

2. During the breeding season, Permittee boats may use the "West Channel" at low speed while maintaining a distance of at least 200 yards from seals. During the breeding season, Permittee may maintain bags in the area labeled on the Protocol Map as "Breeding Season Area," provided that Permittee boats and personnel maintain a distance of at least 200 yards from seals.

3. During the remainder of the year outside the breeding season, from July 1st to the end of February, Permittee may use the three channels and may maintain bags in the area labeled on Protocol Map as "Non-Breeding Season Area," provided that Permittee boats and personnel maintain a distance of at least 100 yards from seals.

4. Throughout the year, no motorized watercraft may enter the area labeled as "Existing Wilderness" on the Protocol Map.

[a] The dates March 1 and June 30 are based on the birthing dates of seals at haul out sites during the breeding season. Pregnant female seals usually arrive around a week before giving birth. The earliest dates of first pup observed in Drakes Estero over the past five years were March 3 and March 6. At Tomales Bay the earliest date in 2007 was 14 February.

PORE

United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807

NATIONAL PARK SERVICE

RECEIVED
Point Reyes National S...
DEC 18 '07

SUPT.
SCIENCE
SPEC. PK. USES
LAW ENFORCE.
CULT. RES.
RANGE CONS.
FIRE MGT.
INTERP.
CULL. RES.
MAINT.
CONTRACTING
PERSONNEL
BUDGET
CENTRAL FILES

IN REPLY REFER TO:

L1425(PWR-C)
Tract 02-106 PORE

DEC 17 2007

Mr. and Mrs. Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake Boulevard
Inverness, CA 94937

Dear Mr. and Mrs. Lunny:

This letter is in response to your October 23, 2007, letter regarding clarification of law, policy and science on Drakes Estero. We are providing answers to your questions in a table format for your perusal.

We are doing so even though the Freedom of Information Act ("FOIA") does not require agencies to answer questions or to create documents in response to requests. By providing this information, the NPS has not waived its ability to invoke applicable FOIA exemptions for similar or related information in the future.

We hope the information is helpful to you.

Sincerely,

George T. Turner

FOR Jonathan B. Jarvis
Regional Director, Pacific West Region

Enclosure

TAKE PRIDE® IN AMERICA

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1149
kevin@drakesbayoyster.com
nancy@drakesbayoyster.com

October 23, 2007

Jon Jarvis
Regional Director
National Park Service
Pacific West Regional Office
One Jackson Center
1111 Jackson Center, Suite 700
Oakland, CA 94607

Re: National Park Service, Clarification of Law, Policy and Science on Drakes Estero

Dear Mr. Jarvis.

On September 18, 2007, you sent the document *"Clarification of Law, Policy, and Science on Drakes Estero"* to Dr. Goodman and have widely circulated it since.

According to your statement, at the bottom of page 5 and top of the following page:

> "With regards to NPS studies within the estero, we wish to clarify points regarding the independence and quality of NPS data. Dr. Goodman questions the quality of the data collected by NPS biologists and others as not independent and not peer-reviewed through published scientific journals. It is true that much of the research within the NPS is applied and often not published in scientific journals; nevertheless, research projects within the NPS are submitted to a rigorous peer-review process that includes scientists from the NPS, other agencies, and academia. An implementation plan is required before a project can begin which requires a detailed description and peer-review of the methods. The protocol development, although not as rigorous as the journal publication process, nevertheless does subject NPS applied

research projects to a significant degree of review intended to insure the quality of the research and the integrity of the findings. The Point Reyes National Seashore Park News publication, "Drakes Estero - A Sheltered Wilderness Estuary," for example was reviewed by scientists from the U.S. Geological Survey and NPS."

This clarification is instructive.

To further assist our understanding of the NPS process regarding the preparation and presentation of research reports, would you provide the following:

(1) **According to your letter and this NPS Statement, "*research projects within the NPS are submitted to a rigorous peer-review process that includes scientists from NPS, other agencies and academia.*"**

(a) When was this peer-review process initiated for the NPS report, *"Drakes Estero, A Sheltered Wilderness Estuary*?"

(b) Identify each NPS scientist who participated in the peer-review process for this report.

(c) Identify each scientist from other agencies who participated in the peer-review process for this report.

(d) Identify each member of academia who participated in the peer-review process for this report.

(e) Provide copies of the instructions and documents provided to each participant in the peer-review process.

(f) Provide reviewer comments pursuant to this process.

(g) Provide the dates of meetings, who attended and participated and copies of the agenda.

(h) In the preparation and publication of the Drakes Estero Report, did NPS fully adhere to Federal policy requirements for peer review?

(2) **According to your Clarification letter, "*an implementation plan is required before a project can begin which requires a detailed description and a peer-review of the methods.*"**

(a) When did this project – the preparation of this report – begin?

(b) When was the required "Implementation Plan" initiated? Completed?

(c) When completed, what was the Implementation Plan approval process and who approved it?

(d) Provide a copy of the implementation plan.

(3) **According to your Clarification letter, "*The protocol development, although not as rigorous as the journal publication process, nevertheless does subject NPS applied research projects to a significant degree of review intended to insure the quality of the research and the integrity of the findings.*"**

(a) Describe the "*protocol development*" as applied to "*Drakes Estero, A Sheltered Wilderness Estuary*."

(b) Provide copies (or results) of the "protocol development."

(c) When were the protocols approved and who approved them?

(4) **According to the "Clarification" document cited above, at its conclusion, "*The Point Reyes National Seashore Park News publication, "Drakes Estero - A Sheltered Wilderness Estuary," for example was reviewed by scientists from the U.S. Geological Survey and NPS.*"**

(a) Identify the "scientists" from the USGS who participated in the review.

(b) At what point in the process did they initiate their review?

(c) Provide copies of their review and/or their comments in whatever form they were provided.

(d) Identify the "scientists" from the National Park Service in the same review.

(e) When did this review occur?

(f) Provide copies of their review and/or comments on the proposed research project in whatever form they were provided.

(5) **Did anyone else, outside of the NPS, other agencies and/or academia participate in the review and/or preparation of the Drakes Estero Report – at any time during the process? If so, please identify that individual or those individuals.**

As you are aware, the NPS report, "*Drakes Estero, A Sheltered Wilderness Estuary*," is very important and we have spent considerable time and effort to fully understand it. Your responses to these questions assist us in that effort.

Thank you.

Kevin Lunny

Nancy Lunny

"Kevin Lunny"
<kevin(b) (6)
12/11/2007 07:21 AM

To "Ben Becker" <ben_becker@nps.gov>
cc
bcc
Subject FW: NPS Drakes Estero Report Reviewer Survey - November 6, 2007

Dear Ben,

"DBOC has not received your response to the Peer-Review Survey, Drakes Estero, A Sheltered Wilderness Estuary. We ask that you take a few moments and respond." We thank you.

Kevin and Nancy Lunny

-----Original Message-----
From: Kevin Lunny [mailto:kevin@drakesbayoyster.com]
Sent: Tuesday, November 06, 2007 1:36 AM
To: Ben Becker (ben_becker@nps.gov)
Subject: NPS Drakes Estero Report Reviewer Survey - November 6, 2007

Dear Ben:

Last July, NPS Regional Director, Jon Jarvis and PRNS Superintendent, Don Neubacher, announced, at a meeting called by Senator Feinstein that several scientists peer-reviewed the NPS Report, *Drakes Estero, A Sheltered Wilderness Estuary* . Regional Director Jarvis recently indicated that you were among those reviewers.

So that we better understand the review, we ask that you take a few minutes to fill out the enclosed Survey on this NPS Report. The attached survey is computer based, and we recommend that you save the attachment to your hard drive, fill it out, then email it back to us as an attachment. If you would prefer to fill it out by hand and snail-mail it to us, you could do that as well.

If you have any questions, or want additional information, please contact us at Drakes Bay Oyster Company at kevin@drakesbayoyster.com or nancy@drakesbayoyster.com OR (415) 669-1149. Our mailing address is 17171 Sir Francis Drake Boulevard, Inverness, CA 94937.

Thank you.

Kevin Lunny Nancy Lunny

NPS Drakes Estero Report Reviewer Survey - November 6, 2007.doc

United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807

RECEIVED
Point Reyes National Seashore
DEC 3 '07
NATIONAL PARK SERVICE
SUPT.
SCIENCE
SPEC. PK. USES
LAW ENFORC.
NAT. RES.
RANGE CONS.
FIRE MGT.
INTERP.
CULT. RES.
MAINT.
CONTRACTING
PERSONNEL
BUDGET
CENTRAL FILES

IN REPLY REFER TO:

L1425 (PWRO-DRD
02-106

NOV 28 2007

Kevin and Nancy Lunny
17171 Sir Francis Drake Boulevard
Inverness, CA 94937

Dear Kevin and Nancy Lunny:

This letter is in response to your November 4, 2007 letter regarding the Drakes Bay Oyster Company and repairs to buildings. It is our preference to focus on finalizing negotiations regarding a special use permit which would address repairs rather than treating the repairs as a separate issue. To this end, we are sending under separate cover a draft of the special use permit for your consideration in advance of our meeting scheduled for December 3, 2007.

Nevertheless, we are prepared to authorize minor repairs separately provided appropriate approvals are in place. As was previously stated in a June 19, 2007 letter to you, we are not opposed to allowing minor repairs to existing structures to occur once approval is received from the California Coastal Commission and any other relevant agencies. For the record, this June 19, 2007 letter also stated that we were prepared to apply the conditions in the Reservation of Use and Occupancy to the area located in the Stevens survey.

We recently contacted the Coastal Commission staff, and they have informed us that either a Coastal Development Permit or a waiver still needs to be obtained from them before the repairs can be accomplished. If you have additional information regarding this issue, please contact us. As we stated in the above paragraph, we are prepared to authorize the repairs once you have the proper authorizations from relevant agencies.

Finally, we want to reiterate our readiness to finalize negotiations for a special use permit, and we look forward to meeting with you on December 3, 2007.

Sincerely,

George J. Turnbull

George J. Turnbull
Deputy Regional Director, Pacific West Region

Enclosure

cc: Don Neubacher, Superintendent, PORE
Suzanne Boyce-Carlson, SOL

TAKE PRIDE® IN AMERICA

United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807

IN REPLY REFER TO:

NOV 28 2007

L1425 (PWR-DRD)

Kevin and Nancy Lunny
17171 Sir Francis Drake Boulevard
Inverness, CA 94937

Dear Kevin and Nancy Lunny:

Thank you for taking the time to speak with us on November 20, 2007 regarding finalizing negotiations for a special use permit for use of the estuary and shoreline in Drakes Estero. We are looking forward to meeting with you on December 3, 2007 to continue our negotiations. As we discussed, please find enclosed a draft of the special use permit for your consideration. This permit includes a revised harbor seal protocol as well as a revised provision regarding the term of the permit.

We look forward to meeting with you next Monday.

Sincerely,

Jonathan B. Jarvis
Regional Director, Pacific West Region

cc: George Turnbull, PWR-DRD
√ Don Neubacher, PWR-PORE
Suzanne Boyce-Carlson, SOL

TAKE PRIDE® IN AMERICA

Form 10-114
Rev. Jan. 00

UNITED STATES DEPARTMENT OF THE INTERIOR
National Park Service

Special Use Permit

Name of Use: Aquaculture

Date Permit Reviewed 2007
Reviewed 20
Reviewed 20
Expires November 30, 2012

Permit # MISC-8530-6000-8002
Type Park Code No. #

Long Term X
Short Term

Point Reyes National Seashore
Name of Area

Drakes Bay Oyster Company
17171 Sir Francis Drake Blvd.
Inverness, CA 94937
(415) 669-1149

is hereby authorized for a period ("Term") commencing on _____, 2007 ("Commencement Date") and terminating on November 30, 2012 ("Expiration Date") to use the following described land, improvements, and waters in the following area:

the lands and improvements at Drakes Bay Estero at the former Johnson's Oyster Site consisting of approximately 1.1 acres of land and improvements designated as the "SUP Area" on the map attached hereto as Exhibit B ("Drake's Estero Oysters – SUP & ROP") and the waters designated as the "SUP Area" on the map attached hereto as Exhibit A ("Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area"). In addition, the Permitter intends to fence off some of the boundaries of the SUP Area shown on Exhibit B, and in the event of any conflict between Exhibit B and fencing provided by the Permitter, the fencing will control. Collectively, the areas so designated shall be referred to as the "Premises."

For the purpose(s) of:

Use of the area designated as the "SUP Area" on the map attached hereto as Exhibit B for the purpose of processing shellfish, the interpretation of shellfish cultivation to the visiting public, and residential purposes reasonably incidental thereto. Use of the area designated as the "SUP Area" on the map attached hereto as Exhibit A for the purpose of shellfish cultivation. Collectively, the uses set forth in this paragraph shall be referred to as the "Permitted Uses."

Authorizing legislation or other authority (RE – DO-53): 16 U.S.C. 1, 1a-1, 3 & 459c; the Reservation of Use and Occupancy.

NEPA & NHPA Compliance: NEPA compliance pending

PERFORMANCE BOND:	Required	Not Required X	Amount:
LIABILITY INSURANCE:	Required X	Not Required	Amount: As set forth in Article 15 of this Permit.

ISSUANCE of this Permit is subject to the terms, covenants, obligations, and reservations, expressed or implied herein and to the payment to the U.S. Dept. of the Interior, National Park Service of the sum of $**2,800.00** per year.

PERMITTEE:_____
Signature Organization Date

Authorizing Official:_____ George Turnbull
Signature Deputy Regional Director Date

Additional Authorizing Official:_____

(If Required)	Signature	Title	Date

LIST OF EXHIBITS

EXHIBIT A: Map – Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area

EXHIBIT B: Map – Drake's Estero Oysters – SUP & ROP

EXHIBIT C: Drakes Estero Aquaculture and Harbor Seal Protection Protocol

CONDITIONS OF THIS PERMIT

1) DEFINITIONS

As used in this Permit, the following terms shall have the following meanings:

a) "Agency" means any agency, department, commission, board, bureau, office or other governmental authority having jurisdiction.

b) "Applicable Laws" includes, without limitation all present and future statutes, regulations, requirements, Environmental Requirements, guidelines, judgments, or orders of any Agency or judicial body, whether now existing or hereafter established, relating to or affecting the Premises or the use or occupancy of the Premises.

c) "Commencement Date" is as defined on the Cover Page of this Permit.

d) "Cyclic Maintenance" means (i) the performance by Permittee of all repairs, maintenance, or replacement-in-kind necessary to maintain the Premises and the existing improvements thereon in good order, condition, and repair; (ii) housekeeping and routine and periodic work scheduled to mitigate wear and deterioration without materially altering the appearance of the Premises; (iii) the repair or replacement-in-kind of broken or worn-out elements, parts or surfaces so as to maintain the existing appearance of the Premises; and (iv) scheduled inspections of all building systems on the Premises.

e) "Default" means Permittee's failure to keep and perform any of the Provisions of this Permit.

f) "Environmental Requirements" means, without limitation, all standards or requirements relating to the protection of human health or the environment such as:

   a. standards or requirements pertaining to the reporting, permitting, management, monitoring, investigation or remediation of emissions, discharges, releases, or threatened emissions, releases or discharges of Hazardous Materials into the air, surface water, groundwater, or land;

   b. standards or requirements relating to the manufacture, handling, treatment, storage, disposal, or transport of Hazardous Materials; and

   c. standards or requirements pertaining to the health and safety of employees or the public.

g) "Expiration Date" is as defined on the Cover Page of this Permit.

h) "Hazardous Materials" means, without limitation, any material or substance, whether solid, liquid, or gaseous in nature,

   a. the presence of which requires reporting, permitting, management, monitoring, investigation or remediation under any Environmental Requirement;

   b. that is or becomes defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "pollutant," "discharge," "waste," "contaminant," or "toxic contaminant" under any Environmental Requirement, or any above-ground or underground storage containers for the foregoing;

   c. that is toxic, explosive, corrosive, flammable, infectious, radioactive, reactive, carcinogenic, mutagenic, or otherwise hazardous to human health or the environment and is or becomes regulated under any Environmental Requirement;

   d. that contains gasoline, diesel fuel or other petroleum hydrocarbons or derivatives or volatile organic compounds, or is an above-ground or underground storage container for same;

e. that contains polychlorinated biphenyls (PCBs), asbestos, asbestos-containing materials or urea formaldehyde foam insulation; or

f. that contains radon gas.

i) "Hazardous Materials Occurrence" means any use, generation, treatment, keeping, storage, transport, release, disposal, migration, or discharge of any Hazardous Materials from, on, under or into the Premises or Point Reyes National Seashore ("Point Reyes") that causes any environmental contamination.

j) "Improvements or Alterations" means any construction that does not fall within the definition of Cyclic Maintenance.

k) "NPS" means the management officials in charge of the administration and operation of Point Reyes, including the Superintendent or his/her designee(s).

l) "Park" means, without limitation, all lands, waters and structures within the legislative boundaries of the Point Reyes National Seashore, all natural and cultural resources within such boundaries, and any other property within such boundaries belonging to Point Reyes. As appropriate given the context, this term also includes the visiting public and/or Point Reyes employees.

m) "Permit" means this instrument which contains those certain termination and revocation provisions as provided for herein.

n) "Permitted Uses" is as defined on the Cover Page of this Permit.

o) "Personal Property" means all furniture, fixtures, equipment, appliances and apparatus placed on the Premises that neither are attached to nor form a part of the Premises. Personal Property also includes any trailers, modular units, and/or temporary structures owned by Permittee.

p) "Point Reyes" means Point Reyes National Seashore.

q) "Premises" is as defined on the Cover Page of this Permit.

r) "Provision" shall mean any term, agreement, covenant, condition or provision of this Permit or any combination of the foregoing.

s) "ROP" or "Reservation of Use and Occupancy" means the Reservation of Use and Occupancy purchased by the Permittee in 2005. In 1972 the United States of America purchased Johnson Oyster Company's property, subject to a Reservation of Use and Occupancy on approximately 1.5 of those acres for a period of forty (40) years. This Reservation of Use and Occupancy expires on November 30, 2012.

t) "SUP" means this Permit.

u) "Term" is as defined on the Cover Page of this Permit.

v) "Termination Date" means the Expiration Date or such earlier date as this Permit is terminated or revoked pursuant to any Provision of this Permit.

2) <u>GENERAL CONDITIONS</u>

a) The Permittee shall exercise this privilege subject to the supervision of the Superintendent, and shall comply with all Applicable Laws.

b) Permit and Approvals – Except as otherwise provided in this Permit, Permittee shall be responsible for obtaining, at its sole cost and expense, all necessary permits, approvals or other authorizations relating to Permittee's use and occupancy of the Premises.

c) Damages - The Permittee shall pay the United States for any damage resulting from this use which would not reasonably be inherent in the use which the Permittee is authorized to make of the land and areas described In this Permit.

d) Benefit - Neither Members of, nor Delegates to Congress, or Resident Commissioners shall be admitted to any share or part of this Permit or derive, either directly or indirectly any pecuniary benefits to arise therefrom: Provided, however, that nothing herein contained shall be construed to extend to any incorporated company if the Permit be for the benefit of such corporation.

e) Assignment and Subletting - This Permit may not be transferred or assigned without the consent of the Permitter, in writing. Permittee shall not sublet the Premises or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with this Permit without the prior written approval of the Permitter.

f) Revocation - This Permit may be terminated upon Default or at the discretion of the Permitter.

g) The Permittee is prohibited from giving false information; to do so will be considered a breach of conditions and be grounds for revocation [Re: 36 CFR 2.32(4)]

3) USE OF PREMISES

a) Permittee is authorized to use the Premises only for the Permitted Uses.

b) Permittee shall not engage in any activity that may be dangerous or harmful to persons, property, or the Park; that constitutes or results in waste or unreasonable annoyance (including, without limitation, signage and the use of loudspeakers or sound or light apparatus that could disturb park visitors and wildlife outside the Premises); that in any manner causes or results in a nuisance; or that is of a nature that it involves a substantial hazard, such as the manufacture or use of explosives, chemicals or products that may explode.

c) The Parties hereby acknowledge and agree that Permittee's covenant that the Premises shall be used as set forth in this Article 3 is material consideration for Permitter's agreement to enter into this Permit. The Parties further acknowledge and agree that any violation of said covenant shall constitute a Default under this Permit and that Permitter may inspect the premises at any time.

d) This Permit is subject to the right of the NPS to establish trails and other improvements and betterments over, upon, or through the Premises and further to the use by travelers and others of such established or existing roads and trails. The Permittee understands that occasional park visitors are authorized to walk, use non-motorized watercraft, or hike in the various areas included in this Permit even though no trails are formally established.

e) Permitter reserves the right for Permitter, its employees, contractors and agents to enter and to permit any Agency to enter upon the Premises for the purposes of inspection, inventory or when otherwise deemed appropriate by the Permitter for the protection of the interests of Permitter, including Permitter's interests in any natural or cultural resources located on, in or under the Premises.

f) Permitter reserves the right at any time to close to travel any of its lands, to erect and maintain gates at any point thereon, to regulate or prevent traffic of any kind thereon, to prescribe the methods of use thereof, and to maintain complete dominion over the same; provided, however, that at all times during the Term, Permitter shall provide Permittee and Permittee's invitees with reasonable access to the Premises subject only to interruptions caused by necessary maintenance or administrative operations or by matters beyond Permitter's control.

g) Permittee hereby waives any claim for damages for any injury, inconvenience to or interference with Permittee's use and occupancy of the Premises, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by Permitter's exercise of its rights under this Article 3 except to the extent that the damages, expenses, claims or suits result from the willful misconduct or gross negligence of Permitter, its employees, contractors or agents; provided, further, that Permitter shall be liable only to the extent such claims are allowed

under the Federal Tort Claims Act.

h) Permittee's operations are to be set back on the shore a minimum of 50 feet from the mean high tide mark, excepting that area which is the subject of this Permit and that is described in the attached map (Exhibit B).

i) While Permittee is permitted to use and operate motorized watercraft in Drakes Estero for the purpose of conducting daily business operations, no other use of Permittee's motorized watercraft is authorized. No motorized watercraft may enter the designated wilderness boundary (See "Existing Wilderness" on map attached hereto as Exhibit A). To protect water quality in the Estero, any additional or replacement boat motors obtained by Permittee must be four stroke motors.

j) Due to a lack of adequate parking space and restroom facilities for the public, barbecuing is not permitted in the Special Use Permit Area; visitors may be directed to facilities located at Drakes Beach. Picnic tables will be provided by the NPS at the adjacent parking area.

k) No discharge into the estuary is permitted. This prohibition includes any discharge from processing facilities. Notwithstanding the foregoing, discharge of oyster wash water from dock and from hatchery operations is allowed if authorized by relevant Agencies.

l) In order to ensure public health and safety, no pets, including dogs and cats, shall be permitted in the Special Use Permit Area.

m) In order to ensure public health and safety, Permittee shall allow all appropriate Federal, State and/ or County agencies; including the United States Department of Health and Human Services, the State of California Department of Health Services and Marin County Community Development Agency Environmental Health Services, to conduct inspections on a routine basis.

4) <u>SPECIAL PERMIT CONDITIONS</u>

a) Based upon the findings of an independent science review and/or NEPA compliance, Permitter reserves its right to modify the provisions of this Article 4. Permitter further reserves its right to incorporate new mitigation provisions based upon the findings of an independent science review.

i) The maximum annual production limit for oysters, rock scallops and clams will be 700,000 pounds.

ii) No additional aquaculture racks and/or cultivation infrastructure will be constructed. Operation, repair, and maintenance of infrastructure currently being used for oyster cultivation is permitted.

iii) Permittee and Permitter acknowledge the importance of eelgrass within the ecology of the estuary. Permittee will not place bags for shellfish production onto eelgrass.

iv) Within sixty (60) days following the signing of this interim Permit, Permittee will submit for National Park Service approval a boating operations plan, which will indicate dedicated navigation routes, chosen to minimize impacts to eelgrass beds when accessing aquaculture racks and/or cultivation equipment.

v) Permittee and Permitter acknowledge the importance of preventing the introduction of invasive species into the estuary. In order to control invasive species, Permittee will make every effort to ensure that no new species enter the estuary and to minimize the spread of invasive species as a result of Permittee's operations. Within sixty (60) days following the signing of this interim Permit, Permittee will submit for National Park Service approval an invasive species mitigation plan that includes best management practices (BMP's).

vi) Permittee will not introduce species of shellfish beyond those described in the existing leases from the California Department of Fish and Game ("CDFG"). Permittee may seek to conform and/or modify these leases with the CDFG. Any modifications approved by CDFG will be considered by Permitter on a case-by-case basis, and Permittee may not implement any such modifications without the prior written approval of the Permitter.

vii) Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites. The Marine Mammal Protection Act, 16 U.S.C. 1361 et seq., includes a prohibition against any act of pursuit, torment or annoyance that has the potential to injure or disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering. The National Oceanic and Atmospheric Administration (NOAA) recommends maintaining a distance of at least 100 yards to avoid disturbance to seals. Permittee will maintain a distance of at least 100 yards from seals throughout the year. Permitter will monitor marine mammal populations in Drakes Estero. In addition, during the pupping harbor seal closure period, March 1-June 30, the designated wilderness area (outside of Permit area) is closed to all boats. Permittee will follow "Drakes Estero Aquaculture and Harbor Seal Protection Protocol" attached hereto as Exhibit C. If required by CDHS, watercraft may use the Main Channel identified in Exhibit C during the pupping harbor seal closure period only to access CDHS's sentinel monitoring station for marine biotoxins. Boats shall be operated at low speed, near the eastern shore, to minimize chance of disturbance to harbor seals. No other use of the Main Channel or any other channel is authorized during the pupping harbor seal closure period.

viii) In order to avoid introduction of invasive species to Drakes Estero only oyster "seed" and not whole oysters may be imported. Seed must be obtained from regions approved by Permitter. At issuance of this Permit Washington, Oregon, and California are exclusively approved regions for obtaining oyster seed.

5) ACCEPTANCE OF PREMISES

a) Prior to entering into this Permit, Permittee has made a thorough, independent examination of the Premises and all matters relevant to Permittee's decision to enter into this Permit, and Permittee is thoroughly familiar with all aspects of the Premises and is satisfied that they are in an acceptable condition and meet Permittee's needs.

b) Permittee expressly agrees to use and occupy the Premises and all improvements thereon in their existing "AS IS" condition "WITH ALL FAULTS" and acknowledges that in entering into this Permit, Permittee does not rely on, and Permitter does not make, any express or implied representations or warranties as to any matters including, without limitation, the suitability of the soil or subsoil; any characteristics of the Premises or improvements thereon; the suitability of the Premises for the approved use; the economic feasibility of Permittee's use and occupancy of the Premises; title to the Premises; the presence of Hazardous Materials in, on, under or in the vicinity of the Premises; or any other matter. Permittee has satisfied itself as to such suitability and other pertinent matters by Permittee's own inquiries and tests into all matters relevant to determining whether to enter into this Permit and Permittee hereby accepts the Premises.

6) CONSTRUCTION OF IMPROVEMENTS OR ALTERATIONS

a) Permittee may only make those Improvements or Alterations to the Premises that relate to Permittee's use of the Premises as specified in Article 3, "Use of the Premises."

b) Permittee shall not undertake any Improvements or Alterations to the Premises (including installation of temporary equipment or facilities) without the prior written approval of Permitter.

c) As a prerequisite to obtaining approval for Improvements or Alterations, Permittee, at Permittee's sole cost and expense, shall submit design plans and any other relevant data for Permitter's approval.

d) Construction of Improvements or Alterations by Permittee shall be performed in accordance with all Applicable Laws, including but not limited to general planning, building, and environmental laws and approved design plans and shall be undertaken and completed at Permittee's sole cost and expense.

e) Permittee shall, upon request, furnish Permitter with a true and correct copy of any contract, and any modification or amendment thereof, with Permittee's contractors, architects, or any other consultants, engaged in connection with this Permit.

f) Any Improvements or Alterations undertaken by Permittee shall be performed in a good and workmanlike manner

and with materials of a quality and standard acceptable to Permitter. Permittee shall also construct, install and maintain equipment and any construction facilities on the Premises in a safe and orderly manner.

g) Permittee shall not construct any Improvements or Alterations outside the boundaries of the Premises.

h) Permitter in its discretion is entitled to have on the Premises at any time during the construction of Improvements or Alterations an inspector or representative who shall be entitled to observe all aspects of the construction on the Premises.

i) All lumber utilized at the site will be processed in compliance with current laws and regulations regarding wood treatments. This includes lumber utilized in assembly and repair of aquaculture racks.

j) As set forth in Article 17, title to any Improvements or Alterations to the Premises shall be and remain solely in the Permitter.

7) TREATMENT OF REFUSE

a) Refuse shall be promptly removed from within the boundaries of Point Reyes National Seashore and shall be disposed of in accordance with Applicable Laws.

b) Permittee will make best efforts to remove debris associated with aquaculture production operations including wood from racks, plastic spacers, unused shellfish bags, shellfish shells, and any other associated items.

8) PESTICIDE AND HERBICIDE USE

a) The National Park Service utilizes Integrated Pest Management ("IPM") to treat pest and vegetation problems. The goal of IPM is to use the least-toxic, effective methods of controlling pests and vegetation. Except for normal household purposes, Permittee shall not use any pesticides that do not comply with the IPM program. To this end, Permittee shall submit in writing to Permitter, a request for the use of pesticide(s) or herbicide(s) and shall not use any pesticide(s) or herbicide(s) until Permittee has received an express written authorization therefor from Permitter.

b) Permittee shall manage, treat, generate, handle, store and dispose of all pesticides and herbicides in accordance with Applicable Laws, including reporting requirements.

9) FIRE PREVENTION AND SUPPRESION

a) Permittee and its employees, agents, and contractors shall, in Permittee's use and occupancy of the Premises, take all reasonable precautions to prevent forest, brush, grass, and structural fires and shall, if safety permits, assist the Permitter in extinguishing such fires on the Premises.

10) EXCAVATION, SITE AND GROUND DISTURBANCE

a) Permittee shall not cut, remove or alter any timber or any other landscape feature; conduct any mining or drilling operations; remove any sand, gravel or similar substances from the ground or watercourse; commit waste of any kind; or in any manner change the contour or condition of the Premises without the prior written approval of the Permitter. Except in emergencies, Permittee shall submit requests to conduct such activities in writing to the Permitter not less than sixty (60) days in advance of the proposed commencement date of any such activities.

b) If approval of activities referenced above in Section10(a) is granted, Permittee shall abide by all the terms and conditions of the approval, including provisions pertaining to archaeological resources.

c) No soil disturbance of any kind may occur in the vicinity of a known archeological site.

11) NONPOINT SOURCE POLLUTION

a) The Permittee shall comply with all Applicable Laws regarding non-point source pollution (including the protection of beneficial uses of waters as designated by the State of California). Further, Permittee's use and occupancy of the Premises shall be designed to minimize, to the greatest extent feasible, non-point source pollution within National Park Service boundaries or on adjacent lands.

b) As set forth in Section 3(m) of this Permit, no discharge into the estuary is permitted. This prohibition includes any discharge from processing facilities.

12) TREE AND VEGETATION REMOVAL

a) The Permittee may not remove tree(s) or vegetation unless expressly approved in writing by the Permitter. The Permittee shall provide specific plans to the Permitter for desired tree(s) and vegetation removal during the annual meeting or in writing during the Term of this Permit.

b) Removal of non-native invasive vegetation such as non-native thistles, trimming and vegetation removal around structures is permissible.

13) WILDLIFE PROTECTION

a) Wildlife is an integral part of Point Reyes National Seashore and must be managed in accordance with all Applicable Laws, including but not limited to NPS legislation, the Code of Federal Regulations, and NPS policies, including but not limited to NPS Management Policies 2006, as such may be amended.

b) Permittee shall not engage in any activity that purposely causes harm or destroys any wildlife. Conversely, Permittee shall not engage in any activity that purposely supports or increases populations of non-native or invasive animal species.

c) As set forth in Section 3(j) of this Permit, Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites.

d) On a case by case basis, the Permitter will evaluate incidences of depredation and choose a course of action. The nature of the course of action will be determined by the extent and frequency of the damage, the wildlife species, and park-wide management objectives.

14) HAZARDOUS MATERIALS; ENVIRONMENTAL HEALTH AND SAFETY

a) In connection with this Permit, Permittee, its officers, agents, employees and contractors, shall not use, generate, sell, treat, keep, or store any Hazardous Materials on, about, under or into the Premises or elsewhere in Point Reyes except in compliance with all Applicable Laws and as approved in writing by Permitter. However, Permittee shall not be obligated to obtain Permitter's approval to use, keep, or generate Hazardous Materials as necessary for the normal operation or maintenance of vehicles. Permittee agrees to be responsible for timely acquisition of any permit(s) required for its Hazardous Materials-related activities, and shall provide to the Permitter, upon request, inventories of all such Hazardous Materials and any supporting documentation, including but not limited to material safety data sheets, uniform waste manifest forms, and/or any other pertinent permits.

b) Permittee, its officers, agents, employees and contractors, shall not release, discharge or dispose of any Hazardous Materials from, on, about, under or into the Premises or elsewhere in Point Reyes.

c) If Permittee knows of or reasonably suspects or receives notice or other communication concerning any past, ongoing, or potential violation of Environmental Requirements in connection with the Premises or Permittee's activities, Permittee shall immediately inform Permitter and shall provide copies of any relevant documents to Permitter. Receipt of such information and documentation shall not be deemed to create any obligation on the part of the Permitter to defend or otherwise respond to any such notification.

d) If any Hazardous Materials Occurrence is caused by, arises from, or is exacerbated by the activities authorized under this Permit or by the use of the Premises by Permittee, its officers, agents, employees or contractors,

Permittee shall promptly take all actions at its sole cost and expense as are required to comply with Applicable Laws and to allow the Premises and any other affected property to be used free of any use restriction that could be imposed under Applicable Laws; provided that, except in cases of emergency, Permitter's approval of such actions shall first be obtained.

e) The Permitter shall have the right, but not the duty, at all reasonable times and, except in the case of emergency, following at least twenty-four (24) hours advance notice to Permittee, to enter and to permit any Agency, public or private utilities and other entities and persons to enter upon the Premises, as may be necessary as determined by the Permitter in its sole discretion, to conduct inspections of the Premises, including invasive tests, to determine whether Permittee is complying with all Applicable Laws and to investigate the existence of any Hazardous Materials in, on or under the Premises. The Permitter shall have the right, but not the duty, to retain independent professional consultants to enter the Premises to conduct such inspections and to review any report prepared by or for Permittee concerning such compliance. Upon Permittee's request, the Permitter will make available to Permittee copies of all final reports and written data obtained by the Permitter from such tests and investigations. Permittee shall have no claim for any injury or inconvenience to or interference with Permittee's use of the Premises or any other loss occasioned by inspections under this Section 14(e).

f) Should Permittee, its officers, agents, employees or contractors, fail to perform or observe any of the obligations or agreements pertaining to Hazardous Materials or Environmental Requirements for a period of thirty (30) days (or such longer period of time as is reasonably required) after notice, then Permitter shall have the right, but not the duty, without limitation of any other rights of Permitter under this Permit, personally or through its agents, consultants or contractors to enter the Premises and perform the same. Permittee agrees to reimburse Permitter for the costs thereof and to indemnify Permitter as provided for in this Permit.

g) Permittee understands and acknowledges that the Premises may contain asbestos and lead-based paint. If Permittee performs any Improvements or Alterations, Permittee shall comply with all Environmental Requirements related to asbestos and lead-based paint and shall solely bear all costs associated therewith. Nothing in this Permit shall be construed to require Permittee to remove asbestos or lead-based paint unless Environmental Requirements require such removal.

h) Permittee shall indemnify, defend, save and hold Permitter, its employees, successors, agents and assigns, harmless from and against, and reimburse Permitter for, any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments, and expenses, including without limitation, consultant fees and expert fees, that arise during or after the Term as a result of any violation of any Environmental Requirement in connection with this Permit or any Hazardous Materials Occurrence in connection with this Permit.

i) The provisions of this Article 14 shall survive any termination or revocation of this Permit. Article 15 (Insurance) of this Permit shall not limit in any way Permittee's or Permitter's obligations under this Article 14.

15) <u>INSURANCE</u>

a) Permittee shall purchase the types and amounts of insurance described herein before the Commencement Date of this Permit unless otherwise specified. At the time such insurance coverage is purchased, Permittee shall provide Permitter with a statement of Permittee insurance describing the insurance coverage in effect and a Certificate of Insurance covering each policy in effect as evidence of compliance with this Permit. Permittee shall also provide the Permitter thirty (30) days advance written notice of any material change in the Permittee's insurance program hereunder. Permitter shall not be responsible for any omissions or inadequacies in insurance coverage or amounts in the event such coverage or amounts prove to be inadequate or otherwise insufficient for any reason whatsoever.

b) From time to time, as conditions in the insurance industry warrant, the Permitter reserves the right to revise the minimum insurance limits required in this Permit.

c) All insurance policies required by this Permit shall specify that the insurance company shall have no right of subrogation against the United States, except for claims arising solely from the negligence of the United States or

its employees, or shall provide that the United States is named as an additional insured.

d) All insurance policies required herein shall contain a loss payable clause approved by the Permitter which requires insurance proceeds to be paid directly to the Permittee without requiring endorsement by the United States. Insurance proceeds covering any loss of the Premises but not used to replace such losses shall be promptly paid by Permittee to Permitter. The use of insurance proceeds for the repair, restoration or replacement of the Premises shall not give any ownership interest therein to Permittee.

e) Property Insurance: At a minimum, the Permittee shall be required to purchase Basic Form Actual Cash Value (replacement cost less depreciation) insurance coverage for all residence on the Premises. Within thirty days of issuance of the Permit, the Permittee shall submit a report from a reputable insurance company which provides a full range of options for insurance coverage on all nonresidential structures on the Premises. Within thirty days of receipt of this report, the Permitter, in its sole discretion, will review and specify the type and level of insurance coverage which shall be required. The Permitter will provide the Permittee written notification of insurance requirements and the Permittee shall be required to have the specified level(s) of insurance in place within thirty days of such notification. The cost of the insurance will be deducted from the appraised fair market value for the Premises; this adjustment and the insurance requirements will be addressed in an amendment to the Permit. Permittee shall, in the event of damage or destruction in whole or in part to the Premises, use all proceeds from the above described insurance policies to repair, restore, replace or remove those buildings, structures, equipment, furnishings, betterments or improvements determined by the Permitter, in Permitter's sole discretion, to be necessary to satisfactorily discharge the Permittee's obligations under this Permit.

f) Public Liability: The Permittee shall provide Comprehensive General Liability insurance against claims arising from or associated with Permittee's use and occupancy of the Premises. Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such use and occupancy, but in any event, the limits of such insurance shall not be less than $1,000,000.00 per occurrence covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, the Permittee shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a Comprehensive General Liability Policy, may be used to achieve the required limits.

g) Permittee shall also obtain the following additional coverage:

   i) Automobile Liability – To cover all owned, non-owned, and hired vehicles in the amount of $300,000.00.

   ii) Workers' Compensation – The amount shall be in accordance with that which is required by the State of California.

16) <u>INDEMNITY</u>

a) In addition to the indemnification contained in Article 14, Permittee shall indemnify, defend, save and hold Permitter, its employees, successors, agents and assigns, harmless from and against, and reimburse Permitter for, any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments and expenses and the like incurred in connection with or arising in any way out of this Permit; the use or occupancy of the Premises by Permittee or its officers, agents, employees, or contractors; the design, construction, maintenance, or condition of any Improvements or Alterations; or any accident or occurrence on the Premises or elsewhere arising out of the use or occupancy of the Premises by Permittee or its officers, agents, employees, or contractors. Permittee's obligations hereunder shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably approved by Permitter), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against the United States.

b) Permitter agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States by third parties for personal injuries or property damage resulting from the negligent act or omission of any employee of the United States in the course of his or her employment.

c) This Article 16 shall survive any termination or revocation of this Permit. The provisions of Article 15 (Insurance) of this Permit shall not limit in any way Permittee's obligations under this Article 16.

17) PROPERTY INTEREST

a) This Permit shall vest in Permittee no property interest in the Premises or in the improvements thereon. Title to real property and improvements thereon, including any Improvements or Alterations constructed by Permittee, shall be and remain solely in Permitter. Permittee shall have no claim for any compensation or damages for the Premises, the improvements thereon, or any Improvements or Alterations constructed by the Permittee.

b) Nothing in this Permit shall give or be deemed to give Permittee an independent right to grant easements or other rights-of-way over, under, on, or through the Premises.

c) Permitter hereby retains the sole and exclusive right to oil, gas, hydrocarbons, and other minerals (of whatsoever character) in, on, or under the Premises.

18) RENTS, TAXES AND ASSESSMENTS

a) The annual rental rate for this Permit shall be established by Permitter and is set forth on the Cover Page of this Permit.

b) The annual rent under this Permit is payable in advance on a semi-annual basis. Therefore, Permittee hereby agrees to pay fifty percent of the annual rate on or before November with the remaining fifty percent payable on or before May of each year during the Term.

c) Permittee shall pay the proper Agency, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time during the Term of this Permit, are levied or assessed against the Premises.

d) Rents due hereunder shall be paid without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment or reduction.

19) CYCLIC MAINTENANCE

a) Permittee shall perform all Cyclic Maintenance in accordance with the Provisions of this Permit and at Permittee's sole cost and expense. Permittee is responsible for the maintenance of all fences, buildings, and other improvements upon the Premises. All improvements and facilities used and occupied by Permittee shall at all times be protected and maintained in a safe, sanitary and sightly condition.

b) Specific maintenance requirements may be negotiated with Permittee each year as outlined in Article 21 (Annual Meeting).

c) Docks and Fences must be in good repair. Abandoned fences and other decrepit improvements shall be removed from the Premises and shall be disposed of outside the Park or as directed by Permitter after review and approval by the NPS Historian.

d) Lighting of the Premises shall be redesigned to protect and preserve the night sky/darkness and minimize light pollution in Drakes Estero.

e) Parking areas shall be maintained in a safe condition and no new roads or truck trails shall be established without prior written permission of the Permitter. The main entrance road will be maintained by the NPS.

f) Existing water reservoirs shall be maintained in a safe and secure condition to prevent washouts and erosion and no new reservoirs shall be constructed or established without prior written approval of the Permitter.

g) Permittee shall maintain the water, well, pump and all pipelines from the main line to the structures within the

Premises. Permittee shall replace or repair any damage or loss of the water system within the Premises.

h) Permittee shall be responsible for removing slash buildup around fences or other facilities within the Premises so as to prevent fire and egress hazards. Permittee shall also be responsible for removing litter and trash from the Premises.

20) COMPLIANCE WITH APPLICABLE LAWS; NEPA, NHPA

a) General Compliance: As provided for in this Permit, Permittee at its sole cost and expense shall promptly comply with all Applicable Laws. Permittee shall immediately notify Permitter of any notices received by or on behalf of Permittee regarding any alleged or actual violation(s) of or non-compliance with Applicable Laws. Permittee shall, at its sole cost and expense, promptly remediate or correct any violation(s) of Applicable Laws.

b) National Environmental Policy Act and National Historic Preservation Act: Where activities undertaken by Permittee require the preparation of compliance documents pursuant to the National Environmental Policy Act ("NEPA") or the National Historic Preservation Act ("NHPA") ("Compliance Activity"), Permittee shall supply all necessary information to Permitter and any Agency in a timely manner. If Permitter determines that the Compliance Activity is warranted, Permitter will prepare NEPA or NHPA documents as appropriate. Permittee shall not implement any aspect of the Compliance Activity until all applicable NEPA and NHPA requirements have been met.

21) ANNUAL MEETING

a) The Parties shall meet annually each year during the Term of this Permit for the purposes of discussing and resolving issues of mutual concern and ensuring that Permittee is complying with the Provisions of this Permit. Any proposed changes or modifications to this Permit which are required in order to meet National Park Service requirements or objectives shall be discussed and negotiated at the Annual Meeting. If National Park Service requirements or objectives require prompt attention, the date of the Annual Meeting may reasonably be changed by Permitter.

22) PROCEDURE IN CASE OF DEFAULT

a) This Permit is made upon the express condition that if Permittee fails to keep and perform any of the Provisions of this Permit, this Permit shall become void at the option of Permitter, provided that Permitter shall first give Permittee thirty days written notice ("thirty day notification period") of Permitter's intention to revoke this Permit and regain possession of the Premises. The notice shall describe the specific Default and shall state Permitter's intention to reenter the Premises and declare this Permit forfeited if such Default continues. Such notice shall be served in the manner provided in Article 29 of this Permit.

b) The parties agree to meet promptly within the thirty day notification period to discuss the reasons for the notice and to try to resolve their differences.

c) If Permittee does not cure the Default or present a reasonable plan therefor within the thirty (30) day period, then Permitter shall be entitled to the possession of the Premises, and may enter into and upon the same or any part thereof and repossess the same and expel Permittee and those claiming through or under Permittee and remove their effects without being guilty of any manner of trespass and without any prejudice to any remedies that might otherwise be used for arrears of rent or preceding Default.

d) At the option of the Permitter, Permitter may, in lieu of voiding and terminating this Permit, assess a penalty of $50.00 per day for any failure by Permittee to keep and perform any of the Provisions of this Permit. In such case, Permittee shall be given notice in writing of a grace period (of from one to thirty days) to remedy the situation before a penalty will be assessed. Payment of any penalty under this provision shall not excuse Permittee from curing the Default. This provision shall not be construed as preventing Permitter from issuing citations or initiating enforcement proceedings under Applicable Laws.

23) SURRENDER AND VACATE THE PREMISES, RESTORATION

A) On the Termination Date of this Permit, Permittee shall surrender and vacate the Premises, remove Permittee's Personal Property therefrom, and repair any damage resulting from such removal. Subject to the approval of the Permitter, Permittee shall also return the Premises to as good order and condition (subject to ordinary wear and tear and damage that is not caused directly or indirectly by Permittee) as that existing upon the Effective Date.

b) All Permittee's Personal Property shall remain the property of Permittee. However, if after the Termination Date, Permittee shall fail satisfactorily to remove Permittee's Personal Property and so repair the Premises, then, at the Permitter's sole option, after notice to Permittee, Permittee's Personal Property, shall either become the property of the Permitter without compensation therefore, or the Permitter may cause it to be removed and the Premises to be repaired at the expense of Permittee, and no claim for damages against Permitter, its employees, agents or contractors shall be created or made on account of such removal or repair work.

24) LIMITATION ON EFFECT OF APPROVALS

a) All rights of Permitter to review, comment upon, approve, inspect or take any other action with respect to the use and occupancy of the Premises by Permittee, or any other matter, are expressly for the benefit of Permitter and no other party. No review, comment, approval or inspection, right or exercise of any right to perform Permitter's obligations, or similar action required or permitted by, of, or to Permitter under this Permit, or actions or omissions of Permitter's employees, contractors, or other agents, or other circumstances shall give or be deemed to give Permitter any liability, responsibility or obligation for, in connection with, or with respect to the operation of the Premises, nor shall any such approval, actions, information or circumstances relieve or be deemed to relieve Permittee of its obligations and responsibilities for the use and occupancy of the Premises as set forth in this Permit.

25) WAIVER NOT CONTINUING

a) The waiver of any Default, whether such waiver be expressed or implied, shall not be construed as a continuing waiver, or a wavier of or consent to any subsequent or prior breach of the same or any other provision of this Permit. No waiver of any Default shall affect or alter this Permit, but each and every Provision of this Permit shall continue in full force and effect with respect to any other then existing or subsequent Default.

26) LIENS

a) Permittee shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion, fee interest or other estate of the Permitter or of any interest of the Permitter in the Premises. If any such lien shall at anytime be filed against the Premises or any portion thereof, Permittee shall cause the Permitter to be discharged from the lien.

27) HOLDING OVER

a) This Permit shall terminate upon the Termination Date and any holding over by Permittee after the Termination Date shall not constitute a renewal of this Permit or give Permittee any rights under this Permit or in or to the Premises.

28) NOTICES

a) Any notice or other communication required or permitted under this Permit shall be in writing and shall be delivered by hand or certified mail with return receipt requested. Notices and other communications shall be addressed as follows:

If to Permitter:

Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

If to Permittee:

Mr. Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

29) NO PARTNERSHIP OR JOINT VENTURE

a) Permitter is not for any purpose a partner or joint venturer of Permittee in the development or operation of the Premises or in any business conducted on the Premises. Permitter shall not under any circumstances be responsible or obligated for any losses or liabilities of Permittee.

30) ANTI-DEFICIENCY ACT

a) Permittee and Permitter agree that nothing contained in this Permit shall be construed as binding Permitter to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the subject matter of this Permit, or to involve Permitter in any contract or other obligation for the future expenditure of money in excess of such appropriations.

31) COMPLIANCE WITH EQUAL OPPORTUNITY LAWS

a) Permittee agrees that in undertaking all activities pursuant to this Permit, Permittee will comply with all Applicable Laws relating to non-discrimination.

32) ENTIRE AGREEMENT AND AMENDMENT

a) This instrument, together with the exhibits hereto, all of which are incorporated in this Permit by reference, constitutes the entire agreement between Permitter and Permittee with respect to the subject matter of this Permit and supersedes all prior offers, negotiations, oral and written. This Permit may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Permitter and Permittee.

33) NO PAYMENTS BY PERMITTER

a) Under no circumstances or conditions, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall Permitter be expected or required to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability except as expressly set forth in this Permit.

34) NO THIRD PARTY BENEFICIARIES

a) Except as expressly set forth in this Permit, this Permit shall not be deemed to confer upon any person or entity, other than the parties to this Permit as expressly set forth in this Permit, any third party beneficiary status, any right to enforce any Provision of this Permit, or any other right or interest.

35) NO PREFERENTIAL RENEWAL AND RELOCATION ASSISTANCE

a) Permittee hereby agrees that Permittee is not a concessioner and that the provisions of law regarding National Park Service concessionaires do not apply to Permittee. No rights shall be acquired by virtue of this Permit entitling Permittee to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition

Policies Act of 1970, Public Law 91-646.

36) SEVERABILITY

a) In case any one or more of the provisions of this Permit shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Permit, and this Permit shall be construed as if such invalid, illegal or unenforceable provisions had not been contained in this Permit.

37) EXHIBITS

a) Each of the exhibits referenced in this Permit is attached hereto and incorporated herein.

38) TIME OF THE ESSENCE

a) Time is hereby expressly declared to be of the essence of this Permit and of each and every Provision of this Permit.

39) HEADINGS

a) Article, Section and Subsection headings in this Permit are for convenience only and are not to be construed as a part of this Permit or in any way limiting or amplifying the Provisions of this Permit.

40) PERMIT CONSTRUED AS A WHOLE

a) The language in all parts of this Permit shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Permitter or Permittee. The Parties acknowledge that each party and its counsel have reviewed this Permit and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed or applied in the interpretation of this Permit.

41) MEANING OF TERMS

a) Whenever the context so requires, the neuter gender shall include the masculine and the feminine, and the singular shall include the plural and vice versa.

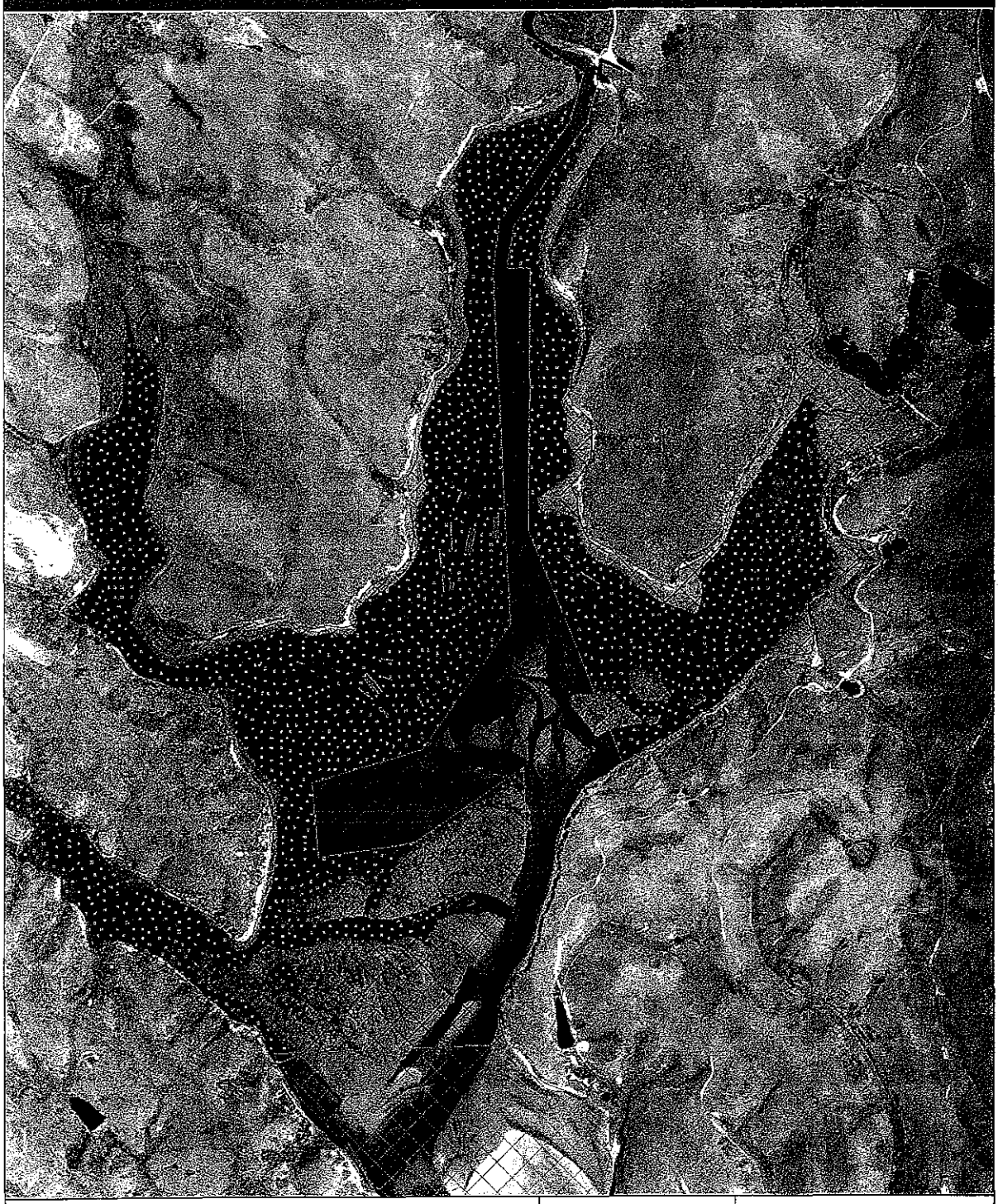
42) FEDERAL LAW

a) The laws of the United States shall govern the validity, construction and effect of this Permit.

Drake's Estero Aquaculture & CDFG Leases

NPS Resources and SUP Area

National Park Service
U.S. Department of the Interior



Permit Type

- ROP
- SUP

Oyster Racks

- Active
- Dilapidated

- Aquaculture Lease/SUP Area
- Potential Wilderness
- Existing Wilderness

Map Location

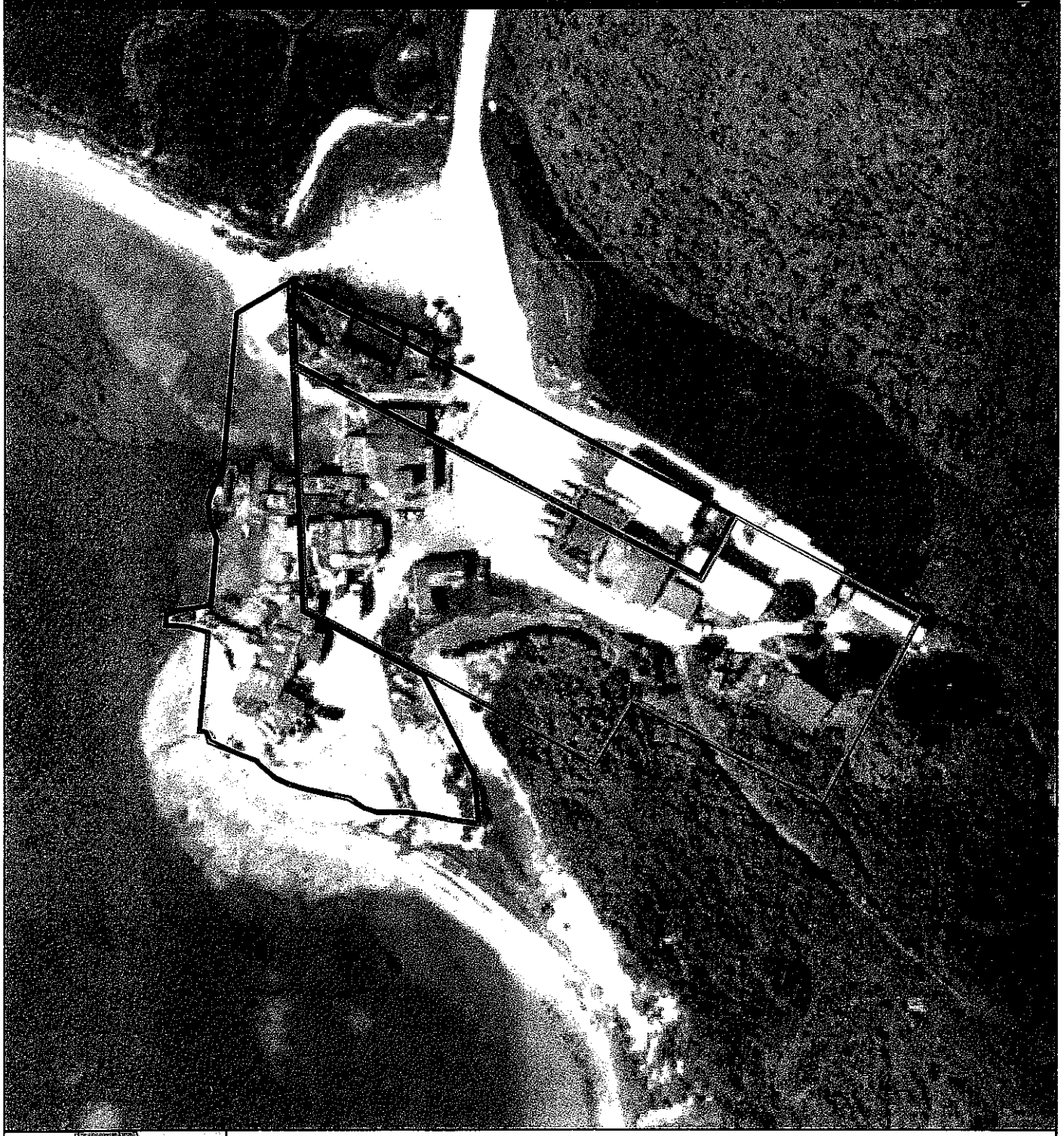
N
W E
S

0 0.5 Miles

EXHIBIT B

Map – Drake's Estero Oysters – SUP & ROP

Drake's Estero Oysters - SUP & ROP



National Park Service
Point Reyes National Seashore
Marin County, CA

N
W E
S

0 50 100 150 200 Feet

Permit Type

ROP - 1.5 acres

SUP - 1.1 acres

EXHIBIT C

Drakes Estero Aquaculture and Harbor Seal Protection Protocol

Drakes Estero Aquaculture and
Harbor Seal Protection Protocol

The following items are mutually agreed to for protection of harbor seals in and adjacent to the Harbor Seal Haul-Out Zones identified in the Map entitled, "Drake's Estero Aquaculture & Seal Protection Zones," attached hereto and incorporated herein by reference ("Protocol Map"):

1. During the breeding season, March 1 through June 30, the "Main Channel" and "Lateral Channel" of Drakes Estero will be closed to boat traffic.[a] The channels and other areas discussed in this Protocol are identified on the Protocol Map.

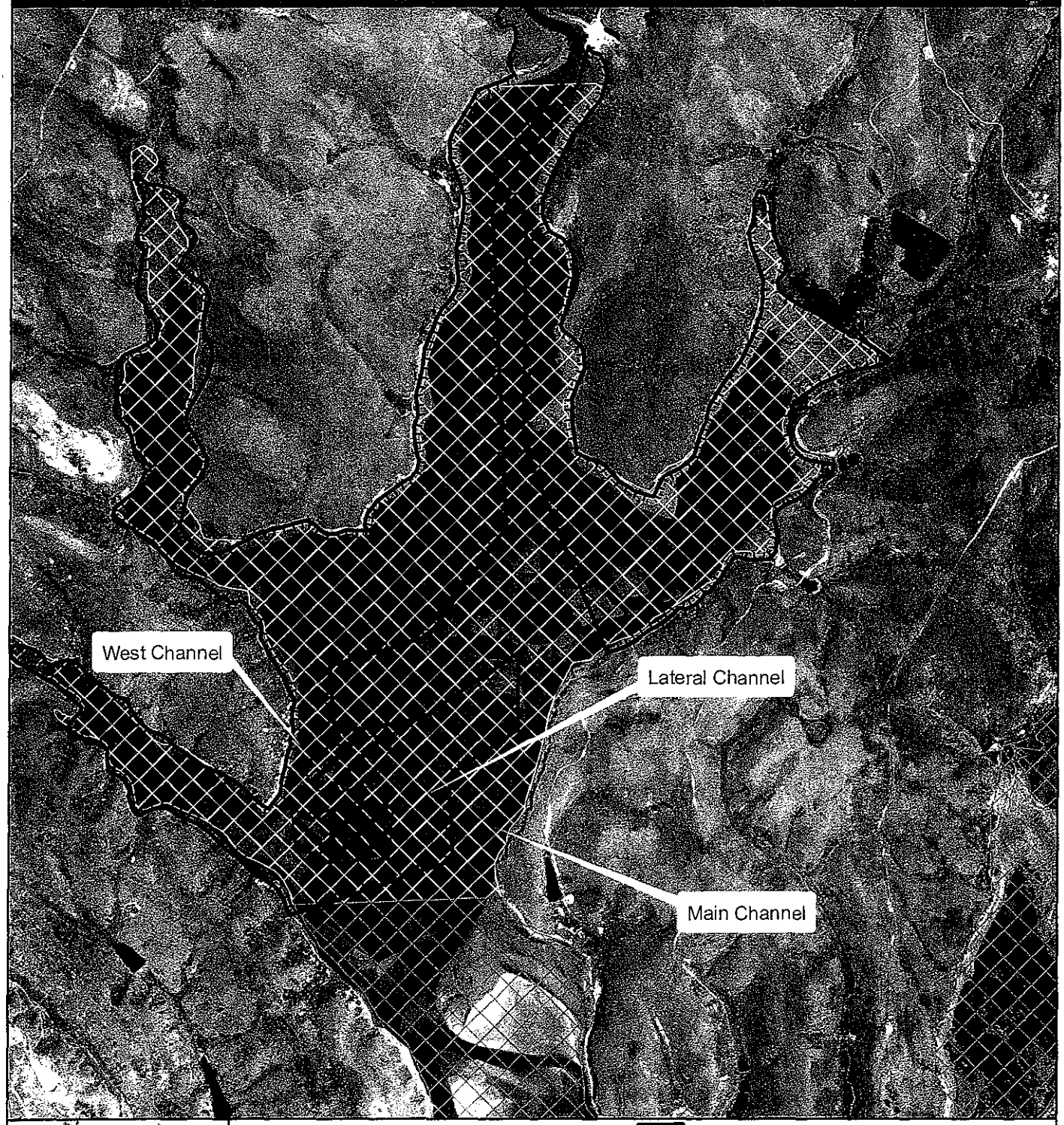
2. During the breeding season, Permittee boats may use the "West Channel" at low speed while maintaining a distance of at least 200 yards from seals. During the breeding season, Permittee may maintain bags in the area labeled on the Protocol Map as "Breeding Season Area," provided that Permittee boats and personnel maintain a distance of at least 200 yards from seals.

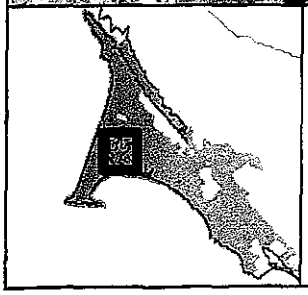
3. During the remainder of the year outside the breeding season, from July 1st to the end of February, Permittee may use the three channels and may maintain bags in the area labeled on Protocol Map as "Non-Breeding Season Area," provided that Permittee boats and personnel maintain a distance of at least 100 yards from seals.

4. Throughout the year, no motorized watercraft may enter the area labeled as "Existing Wilderness" on the Protocol Map.

[a] The dates March 1 and June 30 are based on the birthing dates of seals at haul out sites during the breeding season. Pregnant female seals usually arrive around a week before giving birth. The earliest dates of first pup observed in Drakes Estero over the past five years were March 3 and March 6. At Tomales Bay the earliest date in 2007 was 14 February.

Drakes Estero Aquaculture & Seal Protection Zones





National Park Service
Point Reyes National Seashore
Marin County, CA

0 0.25 0.5 0.75 1
Miles

Aquaculture lease
Potential Wilderness
Existing Wilderness
Harbor Seal Haulout Zone
Oyster Bag Zone
Breeding Season Area
Non-Breeding Season Area

N
W E
S

L1425
Tract 02-106 PORE

November 21, 2007

Kevin and Nancy Lunny
17171 Sir Francis Drake Boulevard
Inverness, CA 94937

Dear Kevin and Nancy Lunny:

This letter is in response to your October 23, 2007 regarding the Trip Reports prepared by Dr. Sarah Allen and the inserted map—Drakes Estero Aquaculture and Seal Habitat. We are providing answers to your questions in a table format for your perusal.

We are doing so even though the Freedom of Information Act ("FOIA") does not require agencies to answer questions or to create documents in response to requests. By providing this information, the NPS has not waived its ability to invoke applicable FOIA exemptions for similar or related information in the future.

We hope the information is helpful to you. We want to also inform you that these documents have been the subject of FOIAs and have been released to those requesting the information. Copies of the Trip Reports are enclosed with this letter as well.

Sincerely,

Don L. Neubacher
Superintendent

Enclosures

DLNeubacher/SBCarlson:an 11/21/07

Response to Drakes Bay Oyster Company
October 23, 2007 Letter

1. Why is the map undated, unnumbered and without any GIS or other appropriate designation.	PDF map was created at Point Reyes National Seashore as an insert to the Trip Reports dated April 13 and 26, 2007. Trip Reports and electronic files were dated.
2. When—what day—was the map created?	See #3 below.
3. Please provide the documentation requesting the new map be created and documentation showing which day it was created.	No documents exist. However, the document PDF files were created on April 27, 2007.
4. Who ordered the map to be created?	The map as an insert was created to illustrate the location of aquaculture areas and seal areas in Drakes Estero. The map was created by PRNS staff.
5. Who drew the lines or ordered the lines to be drawn that depict the seal haul out pupping area?	PRNS staff drew the line on the map based on current harbor seal population and site information.
6. The lines depicting the haul out area are considerably different when compared to the 92 NMFS-NPS Agreement or a map provided by Sarah Allen shortly after we took over the oyster farm. Why has the map changed?	PRNS staff update maps as information is obtained as fluctuations occur in harbor seal pupping and haul out locations.
7. Provide the documentation—reports, documents, memorandum, other information—which justifies the haul out boundary changes on this new map.	No formal document exists. The change was made based on field observations and expert opinion.
8. Presumably, there is new science which justifies this expanded haul out area. Please provide a full and complete documentation of the new science?	No formal document exists. The change was made based on field observations and expert opinion.
9. Why was the new map created in the middle of a pupping season?	The map was created to illustrate conditions at the time the field observations where made in the spring of 2007.
10. This map this "aquaculture" map—was not provided to us—your leasee. Why not?	This map was created as an insert to Trip Reports and was released as part of the Trip Reports. See #1 and #12 for further information.
11. This new map was not provided to California Department of Fish and Game, the agency which manages the lease. Why not?	The NPS did not send the map to California Department of Fish and Game because the main purpose of the map was to illustrate the information in the Trip Reports.
12. To whom did you provide copies of this map? Federal agencies? State agencies? Local government? Non-profits or NGOs? Individuals? Provide names, affiliations, and contact information.	There is no listing of individuals or agencies that exists regarding whom was given copies of the map. The map was created as an insert to Trip Reports and was released as part of the Trip Reports. The Trip Reports were released to anyone requesting them under a Freedom of

	Information Act (FOIA) Request and to anyone requesting the information.
13. To whom did you provide copies of the April 13 and/or April 26 Trip Reports which contain this map? Provide names, affiliations, contact information.	There is no listing of individuals or agencies that exists regarding whom was given copies of the Trips Reports. The Trip Reports were released to anyone requesting them under a FOIA Request and to anyone requesting the information.

Trip Report
Drakes Estero
4/13/07
3:45-5:00 PM

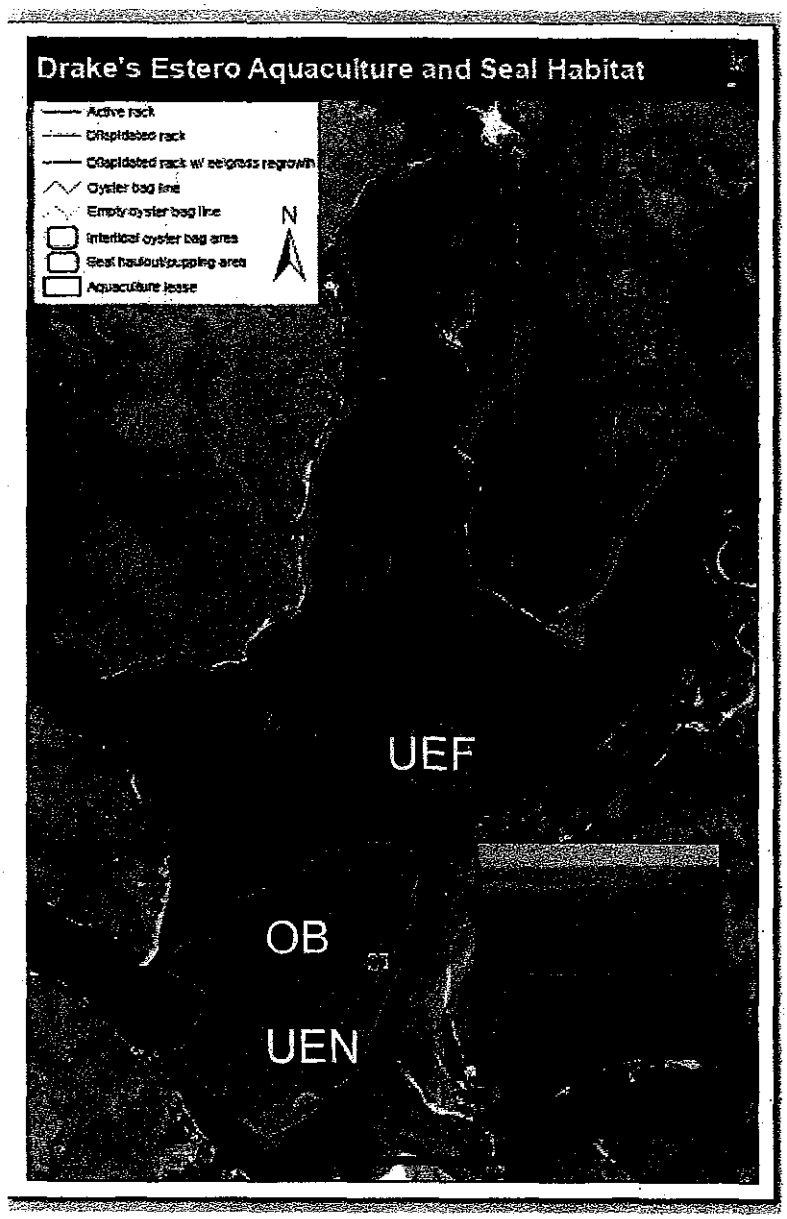
Sarah Allen, Science Advisor

I conducted a field survey of Drakes Estero on Friday during the afternoon low tide to count harbor seals and to determine the distribution and number of oyster bags on the seal haul out sites.

I arrived at 3:40 PM and met a volunteer who surveys harbor seals who had been present since 1:45 PM. She stated that she had observed 2 people in a boat tending oyster bags at the OB sand bar (see map) at around 2:30 PM. There were no seals present on the OB sand bar and the number at UEN was 133 with 21 pups, and the total count for the estero was 525, including 46 pups when she counted the seals at 2:20-30 PM.

When I conducted the survey at 4 PM, there were 10 seals present and 2 pups at the OB sandbar and 117 seals and 54 pups on UEN sand bar, a 157% increase in seals on the UEN sandbar. These two sites have historically had the higher numbers of females with pups likely because the pups are more protected from strong currents and the water is warmer in the middle of the estero. The total count for the estero was 618 including 88 pups, a 120% increase in pups after the boat left, even though it was late in the day. Seal numbers are highest mid day to mid-afternoon, depending on the tide level. The tide was low enough for the seals to haul out at 1:00 PM. For comparison of numbers on OB, in 2005 on April 12, there were 105 seals and 62 pups, and in 2004 on April 11, there were 169 seals and 36 pups.

I observed several rows of bags on both the OB and UEN sandbars where the seals haul out. Because of distance, I could not get an accurate count of bags, but the number of rows was around 20. The bags were adjacent to and directly on the haul out sites where the seals historically have hauled out in the past at OB and UEN (see map).


Drake's Estero Aquaculture and Seal Habitat
Active rack
Dilapidated rack
Dilapidated rack w/ eelgrass regrowth
Oyster bag line
Empty oyster bag line
Intertidal oyster bag area
Seal haulout/pupping area
Aquaculture lease
N
UEF
OB
UEN

Trip Report
Drakes Estero
4/26/07
3:45-5:00 PM

Sarah Allen, Science Advisor

I conducted a field survey of Drakes Estero on Thursday during the afternoon low tide to count harbor seals for the peak pupping season count.

I arrived at 3:45 PM and began counting the seals at A and A1 sandbars. At 3:50 PM I noted a white boat (@20 ft long) with outboard motor and two people aboard in the east end of the OB seal haul out site. The boat was fowled in eelgrass and the operators were poling through the eelgrass bed. Once half way along the channel going west, they used the engine again. I did not see the number of seals present before the boat was there; however there were only 5 (2 pups) when I began surveying and I saw seal heads in the water. There were seal drag marks on the sand bar indicating other seals may have been present and several fresh wet seals were hauling out on UEN, an adjacent sand bar. Also on previous day 4/25, a volunteer counted 21 (8 pups) on the OB haul out. When the boat went by the seals at 3:55 PM, all flushed into the water except one lone seal. Seals on UEN raised their heads but I did not see any enter the water. The boat continued west along the channel and flushed around 120 Black Brant that were in the eelgrass beds in the channel.

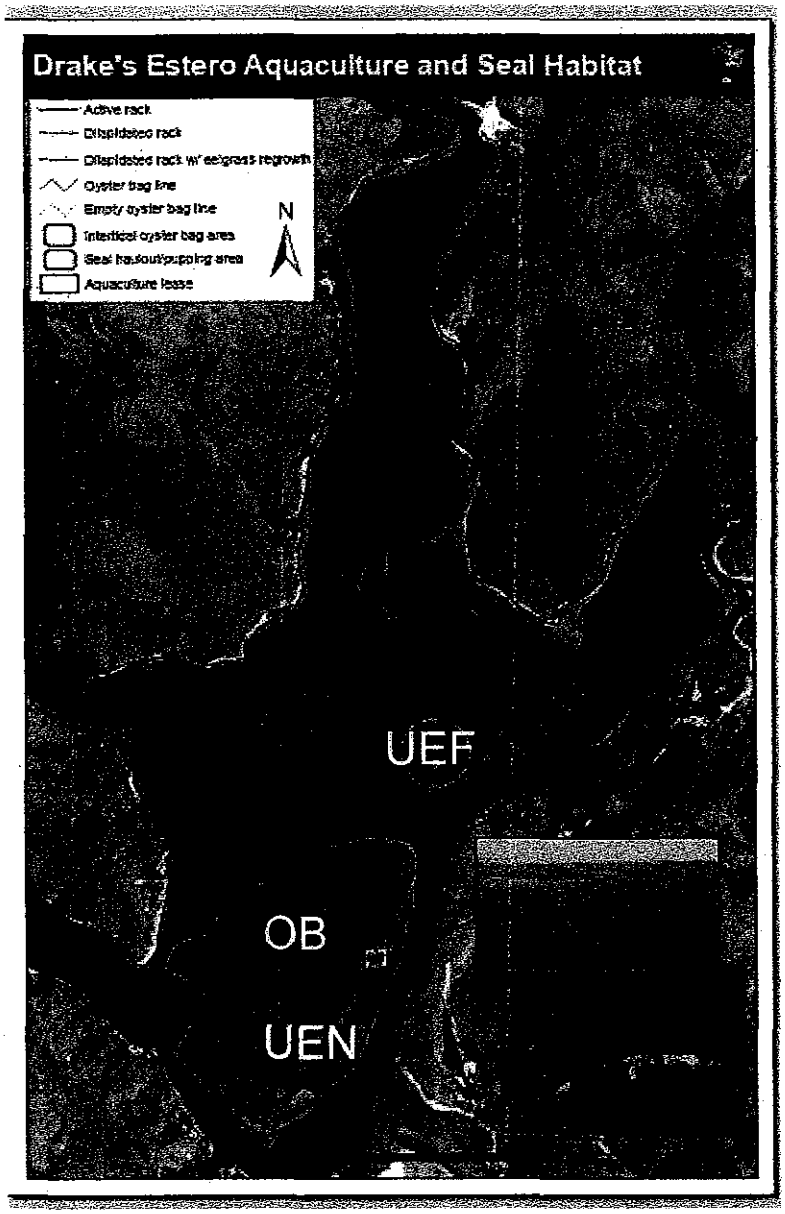
The boat then landed at around 4:10 PM about 2/3 of the way along the channel going west on the OB channel on the north west side where many oyster bags are located. Two men got off the boat, one taller in a green slicker and another in yellow slicker pants. They remained on the site until around 4:38 OM. During this time, they checked bags and added around 30 more bags onto the sandbar on the north west side of the sand bar and closer to the seals. During the interim time, 6 (2) seals hauled out at OB. When the boat proceeded back down the channel going east towards the seals at 4:55 PM, 5 seals flushed into the water included 2 mother-pup pairs at OB, another 3 mother pup pairs flushed at UEN sand bar, and around 75 seals alerted at UEN but did not enter the water. Additionally, around 200 black brant were flushed that were in the eelgrass beds in the channel after previously being flushed by the boat. At 4:58 PM, the boat then proceeded up into Home Bay. I terminated the survey at 5:00 PM.

A total of around 90 seals including around 50 pups were disturbed by the boat, and of these, I observed 14 seals including 7 pups directly flushed into the water. From previous research, we know that females with pups are more disturbed than adult males or immature seals. Additionally, around 320 black brant were flushed while in eelgrass beds.

During surveys of the estero, I again observed several rows of bags on both the OB and UEN sandbars where the seals haul out. Because this is the peak pupping season, mothers with pups are hauling out all over UEN, including near where the oyster bags are

located. There also appeared to be more bags on UEN, in addition to the bags added to OB today. Again, the bags were adjacent to and directly on the haul out sites where the seals historically hauled out in the past three decades of surveys that I have conducted.

Map of Drakes Estero – red circle indicates where seals and Black Brant were disturbed.



"Kevin Lunny"
<kevin@lunnypaving.com>
11/16/2007 10:33 AM

To <Jon_Jarvis@nps.gov>
cc "Zachary Walton" <zacharywalton@paulhastings.com>
bcc
Subject RE: Proposed SUP Meeting

History: This message has been replied to.

Thank you, Jon.

Is 2:00PM OK?

Would you be willing to initiate a conference call?

I will be at (b) (6) [redacted]
Zack will be at 415-856-7076

Thank you,

Kevin

-----Original Message-----
From: Jon_Jarvis@nps.gov [mailto:Jon_Jarvis@nps.gov]
Sent: Friday, November 16, 2007 9:07 AM
To: Kevin Lunny
Cc: George Turnbull
Subject: Re: Proposed SUP Meeting

Sounds good. I will call on tuesday. Sorry about the message issue.
We had computer problems nationwide.

Jon

Sent from my BlackBerry Wireless Handheld
Jonathan B. Jarvis
Regional Director
Pacific West Region
510-817-1304 Oakland
206-220-4010 Seattle

----- Original Message -----
From: "Kevin Lunny" [kevin@drakesbayoyster.com]
Sent: 11/16/2007 06:12 AM PST
To: Jon Jarvis
Cc: "Zachary Walton" <zacharywalton@paulhastings.com>
Subject: FW: Proposed SUP Meeting

Jon,

My last email to your address was returned.

Kevin

-----Original Message-----
From: Kevin Lunny [mailto:kevin@lunnypaving.com]
Sent: Friday, November 16, 2007 5:43 AM
To: Jon_Jarvis@nps.gov
Cc: Zachary Walton
Subject: RE: Proposed SUP Meeting

Jon,

We can be available any time after 1:00PM on Tuesday. Please feel free to pick a time that is convenient for you. Zack Walton will also be on the call.

Thank you,

Kevin

-----Original Message-----
From: Jon_Jarvis@nps.gov [mailto:Jon_Jarvis@nps.gov]
Sent: Thursday, November 15, 2007 3:23 PM
To: Kevin Lunny
Subject: RE: Proposed SUP Meeting

Kevin: Sorry I have been on travel. I left a voice mail today. When would be a good time to talk?

Jonathan B. Jarvis
Regional Director
Pacific West Region
510-817-1304 Oakland

United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

(0001)

NOV 13 2007

Mr. Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake Boulevard
Inverness, California 94937

Dear Mr. Lunny:

Thank you for your letter dated October 5, 2007, which transmitted correspondence you sent to Congresswoman Lynn Woolsey. I apologize for the delay in responding to you. Your letter was not received by the National Park Service until October 18, 2007.

As you may know, Senator Feinstein wrote to me regarding the follow-up to the meeting held in Olema in July. I recently responded to her letter and am including a copy of my response for your information. I assure you that I am committed to the National Park Service following through as was agreed to in Olema. As my letter to Senator Feinstein indicates, we are not seeking new scientific reviews, but rather, an independent review of what has already been done.

Thank you for your letter. I am copying Regional Director Jarvis as I have assigned him responsibility for managing this issue. He remains willing to meet with you at any time to resolve the remaining issues associated with the special use permit.

Sincerely,

Mary A. Bomar

Mary A. Bomar
Director

Attachment

cc: Jon Jarvis, PWR

Kevin please talk with Jon
to work through completion
of the special use permit.
Mary.

"Kevin Lunny" <kevin@drakesbayoyster.com>
11/09/2007 03:11 PM

To <Jon_Jarvis@nps.gov>
cc
bcc
Subject RE: Proposed SUP Meeting

History: This message has been replied to and forwarded.

Jon,

I would be happy to talk on the phone. As you know, we're anxious to get the SUP completed as soon as possible. I am available anytime on Monday except lunch time, anytime Tuesday afternoon and anytime Wednesday afternoon.

I look forward to hearing from you,

Kevin

-----Original Message-----
From: Jon_Jarvis@nps.gov [mailto:Jon_Jarvis@nps.gov]
Sent: Tuesday, November 06, 2007 5:34 PM
To: Kevin Lunny
Subject: Re: Proposed SUP Meeting

Kevin: we never really got this call set up and I would like to try again. As I said in Olema, I would like to get you a permit and want to figure out how we can make that happen. A phone call is a start. I do not plan to have my attorney on the call, but you may yours if you feel that is necessary. Please let me know when you are available.

Jon

Sent from my BlackBerry Wireless Handheld
Jonathan B. Jarvis
Regional Director
Pacific West Region
510-817-1304 Oakland
206-220-4010 Seattle

----- Original Message -----
From: "Kevin Lunny" [kevin@drakesbayoyster.com]
Sent: 09/14/2007 09:24 AM MST
To: Jon Jarvis
Cc: "David M. Weiman" <agresources@erols.com>; "Zachary Walton" <zacharywalton@paulhastings.com>
Subject: RE: Proposed SUP Meeting

Jon,

Sorry for the delay in my response. I would be happy to talk with you as soon as we can arrange a time. I have to leave right now and will be in the field most of the day today.. Monday or Tuesday could work. I

would like to have Zachery Walton, our attorney, join us for the call. Feel free to recommened a time.

Thank you,

Kevin

-----Original Message-----
From: Jon_Jarvis@nps.gov [mailto:Jon_Jarvis@nps.gov]
Sent: Thursday, September 13, 2007 7:22 AM
To: Kevin Lunny
Subject: Re: Proposed SUP Meeting

Kevin: any chance I could call you to talk briefly? I will not ask you for anything other than to listen to my perspective. Friday?

Sent from my BlackBerry Wireless Handheld
Jonathan B. Jarvis
Regional Director
Pacific West Region
510-817-1304 Oakland
206-220-4010 Seattle

----- Original Message -----
From: "Kevin Lunny" [kevin@drakesbayoyster.com]
Sent: 09/12/2007 03:50 PM MST
To: George Turnbull
Cc: Jon Jarvis; Holly Bundock; "'Walker, Michael \(Feinstein\)'" <Michael_Walker@feinstein.senate.gov>; "'Walton, Zachary R.'" <zacharywalton@paulhastings.com>; "'David M. Weiman'" <agresources@erols.com>
Subject: RE: Proposed SUP Meeting

Dear George,

Thank you for the note. I will talk to our team to see if they are available.

Please include David Weiman and Zachary Walton in all your correspondence with us regarding the Drakes Bay Oyster Farm and the G Ranch.

Thank you,

Kevin

-----Original Message-----
From: George_Turnbull@nps.gov [mailto:George_Turnbull@nps.gov]
Sent: Tuesday, September 11, 2007 6:06 PM
To: Kevin Lunny
Cc: Jon_Jarvis@nps.gov; Holly_Bundock@nps.gov; Walker, Michael (Feinstein)
Subject: Proposed SUP Meeting

Hi Kevin,

Thank you for taking the time to meet with us on the Drakes Bay Oyster SUP and other issues yesterday. After further conversations with the Regional Director and Senator Feinstein's staff, I would like to propose meeting with you and your team again next week to see if we can finalize an SUP within the next couple of weeks. Once again, we do still feel NEPA compliance is required, but we would offer you a two year interim permit. We would like to specifically discuss mitigation measures that might be included in the SUP, all of which we have discussed in our earlier session. Mr. Michael Walker from Senator Feinstein's office has offered to participate in the meeting to help broker an agreement. I am available all day September 18 (Tuesday) and September 20 (Thursday). Hopefully you are available one or both of these days so we can continue to make progress towards an agreement on an SUP. Let me know either way about your availability. Thanks again.

George Turnbull

"Kevin Lunny"
<kevin@drakesbayoyster.com>

11/06/2007 01:36 AM

To "Ben Becker" <ben_becker@nps.gov>

cc

bcc

Subject NPS Drakes Estero Report Reviewer Survey - November 6, 2007

Dear Ben:

Last July, NPS Regional Director, Jon Jarvis and PRNS Superintendent, Don Neubacher, announced, at a meeting called by Senator Feinstein that several scientists peer-reviewed the NPS Report, *Drakes Estero, A Sheltered Wilderness Estuary* . Regional Director Jarvis recently indicated that you were among those reviewers.

So that we better understand the review, we ask that you take a few minutes to fill out the enclosed Survey on this NPS Report. The attached survey is computer based, and we recommend that you save the attachment to your hard drive, fill it out, then email it back to us as an attachment. If you would prefer to fill it out by hand and snail-mail it to us, you could do that as well.

If you have any questions, or want additional information, please contact us at Drakes Bay Oyster Company at kevin@drakesbayoyster.com or nancy@drakesbayoyster.com OR (415) 669-1149. Our mailing address is 17171 Sir Francis Drake Boulevard, Inverness, CA 94937.

Thank you.

Kevin Lunny Nancy Lunny

NPS Drakes Estero Report Reviewer Survey - November 6, 2007.doc

POKE

United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807

RECEIVED
Point Reyes National Seashore
NATIONAL PARK SERVICE
NOV 13

SUPT.
SCIENCE
SPEC. PK. USES
LAW ENFORC.
NAT. RES.
RANGE CONS.
FIRE MGT.
INTERP.
CULT. RES.
MAINT.
CONTRACTING
PERSONNEL
BUDGET
CENTRAL FILES

IN REPLY REFER TO:

A7221(PWR-C)

NOV 0 5 2007

Mr. Kevin Lunny
17171 Sir Francis Drake Boulevard
Inverness, California 94937

Dear Mr. Lunny:

I have received your letter to Congresswoman Woolsey which asks for answers to a set of questions concerning *Drakes Estero: A Sheltered Wilderness Estuary*. I have spoken with the staff of Congresswoman Woolsey, and we agree it is most expeditious to reply directly to you.

As you know, the document known as *Drakes Estero: A Sheltered Wilderness Estuary* ("Park News Document") was one of the subjects of the July 21, 2007, meeting we both attended. We discussed the questions you include in your letter on peer review and the postings of the document on the NPS website at the July meeting. You might recall the conversation between myself, Dr. Corey Goodman, and Mr. David Weiman before the full group in attendance.

As a way to move forward, the NPS agreed at this meeting to remove the Park News Document from its website and arrange for an independent scientific review at NPS expense. The NPS has followed through on these commitments. The NPS removed the Park News Document from its website the next business day, and the NPS has submitted a proposal to the National Academy of Sciences for an independent review.

Your letter now indicates that you believe you cannot move forward with Special Use Permit negotiations until the NPS provides answers to a detailed set of questions regarding the Park News Document. We are very interested in moving forward to complete the Special Use Permit negotiations. This is why I recently wrote to you following the last negotiation meeting to assure you that the NPS has every intention of allowing your operation to continue until November of 2012, under the terms of the Reservation of Use and Occupancy and in compliance with a valid special use permit.

Because we would like to move forward, we are providing brief answers to your questions in a table format like that attached to your letter and enclosures. We are doing so even though the Freedom of Information Act ("FOIA") does not require agencies to answer questions or to create documents in response to requests. By providing this information, the NPS has not waived its ability to invoke applicable FOIA exemptions for similar or related information in the future.

TAKE PRIDE® IN AMERICA

Your letter to Congresswoman Woolsey indicates that lacking an understanding of our working process, you are unable to meet with us. We trust that by providing you with these answers about our process on information collection and delivery, you will be able to finalize your pending NPS permit. As you know, my Deputy Regional Director George Turnbull and our Solicitor, Suzanne Boyce-Carlson, are prepared to meet with you as soon as possible to complete negotiations on the much needed Special Use Permit for the Drakes Estero.

Sincerely,

Jonathan B. Jarvis
Regional Director, Pacific West Region

Enclosures

cc:
Senator Dianne Feinstein
Congresswoman Lynn Woolsey

Drakes Bay Oyster Company Requested Information
Drakes Estero: A Sheltered Wilderness Estuary
October 19, 2007
Draft, Privileged and Confidential—Not for public distribution

	Information Requested	Park Service Response
1.	Date of Original Publication, Drakes Estero Report	We are uncertain of what you mean by the word "publication." However, the NPS began working on the Park News Document in August of 2006.
2.	Drakes Estero Report First Uploaded to the NPS/PRNS Web Site	The Park News Document was first posted on the Point Reyes National Seashore ("PRNS") NPS website on February 9, 2007.
3.	Identify Author or Authors Who Contributed to Drakes Estero Report	There is no document listing those who contributed to the Park News Document. It is common when producing information for the NPS website for various staff members to contribute to the information. NPS documents can go through various drafts with different staff members having different roles as relate to their particular duties. This Park News Document was developed through such a process involving NPS staff. The Park News Document was prepared by the NPS, and the NPS takes responsibility for the Park News Document.
4.	Provide Titles of Each Author Who Contributed to Drakes Estero Report	See answer to item 3.
5.	Provide Qualifications for Each Author Who Contributed to Drakes Estero Report	See answer to item 3.
6.	For Each Version of Drakes Estero Report, Identify All Reviewers (formal or informal, internal or external)	There is no document listing this information for the Park News Document. Various staff from PRNS, USGS, and individuals from outside entities provided review. PRNS has in its files some documents related to review provided by individuals from outside entities in the context of reviewing the Park News Document and another publication entitled, "National Park Service Clarification of Law, Policy, and Science on Drakes Estero." We have previously sought the permission of these reviewers to release their comments. We are discretionarily releasing those documents to which the reviewers have consented to release.

	Information Requested	Park Service Response
7.	For Each Version of Drakes Estero Report, Provide Titles and Qualifications of Each Version	There is no document listing this information for the Park News Document. Titles and qualifications are contained in some of the information we are releasing as discussed in item 6.
8.	Identify Each NPS Official Who Signed Off on and/or Approved Drakes Estero Report at NPS Regional Office	There is no document indicating "sign off" on the Park News Document.
9.	Identify Each NPS Official Who Signed Off on and/or Approved Drakes Estero Report at NPS Headquarters	See response to item 8.
10.	Identify Each NPS Official Who Signed Off on and/or Approved Drakes Estero Report at Other NPS Offices	See response to item 8.
11.	Identify Each NPS Official Who Signed Off on and/or Approved Drakes Estero Report at NPS/PRNS	See response to item 8.
12.	Prior to Publication When Was the Drakes Estero Report Peer Reviewed	See response to item 6.
13.	Prior to Publication, Identify Each Peer-Reviewer(s)	See response to item 6.
14.	Specify Qualifications for Each Peer Reviewer	See response to item 6.
15.	Provide Copies of Peer Reviewer's Comments	See response to item 6.
16.	Itemize and List Each Version of the Drakes Estero Report, in Total, Exist	There is no document listing this information. The NPS began working on the Park News Document in August of 2006. It was posted on the PRNS NPS website on February 9 and May 11, 2007. It was provided to the Marin County Board of Supervisors at a meeting held on May 8, 2007. It was revised in July 2007 but has not been publicly released because the NPS is committed to an independent review of the science related to this matter.
17.	Itemize and List When Each Version of the Drakes Estero Report was Published	There is no document listing this information. The Park News Document was posted on the PRNS NPS website on February 9 and May 11, 2007.

	Information Requested	Park Service Response
18.	Itemize Each Change to Each Version of the Drakes Estero Report	There is no document containing this information, and we decline to create such a document for the reasons stated in the cover letter accompanying this table.
19.	Itemize Each Change to Each Version of the Drakes Estero Report including Additions, Deletions and Modifications	See response to item 18.
20.	For Each Version of the Drakes Estero Report, Provide a Full and Complete Explanation for Each (Estimated to be 25-30 Changes)	See response to item 18.
21.	If New Data [for Drakes Estero Report] Was Obtained, Include that New Data and Provide a Full and Complete Analysis	The Park News Document references the sources that were used in preparing the Park News Document. There is no document separately listing this information or providing analysis.
22.	If New Data [for Drakes Estero Report] Was Obtained, Indicate How the Data Was Obtained	See answer to item 21.
23.	If New Data [for Drakes Estero Report] Was Obtained, from Whom Was it Obtained	See answer to item 21.
24.	If New Data [for Drakes Estero Report] Was Obtained, When Was It Obtained	See answer to item 21.
25.	Explain why the [Drakes Estero] Report was republished so frequently	There is no document providing this information. The NPS periodically updates its website for a variety of reasons including the availability of new information.
26.	NPS management policy states, in part, "*Decision-makers and Planners will use Best Available Scientific and Technical Information and Scholarly Analysis...*" Affirm, in approval of Drakes Estero Report, the requirements of the policy were fully met.	This issue is being handled separately through the complaint process provided under Director's Order 11B.
27.	Provide Policy Regarding Preparations and Publication of Drakes Estero Report	There is no policy specific to this Park News Document. Director's Order 11B provides NPS policy regarding ensuring the quality of information disseminated by the NPS.
28.	Provide Reviewer Comments for each Version of the [Drakes Estero] Report	See response to item 6.

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1149
kevin@drakesbayoyster.com
nancy@drakesbayoyster.com

November 4, 2007

Mr. George Turnbull
Deputy Regional Director
National Park Service
US-CA-Pacific West Regional Office
1111 Jackson Street, Suite 700
Oakland, CA 94607

Dear Mr. Turnbull,

In 2005, Drakes Bay Oyster Company (DBOC) submitted plans to Marin County Community Development Agency (CDA) for a permit to make repairs to the existing buildings at the oyster farm. This planned work would complete the requirements listed by the Point Reyes National Seashore (PRNS) and the California Coastal Commission (CCC) in their Cease and Desist Order (issued to the former owners of the farm, Johnson Oyster Company, in 2003). Since 2005, there has been a planning hold (attached) issued by the CDA. The last requirement, prior to permit issuance, is written authorization from the National Park Service, as property owner, to perform this work. Superintendent Neubacher has refused to give the CDA the authority to issue this permit to DBOC. Mr. Neubacher's refusal was based on his claim that the buildings were not located on the Reservation of Use and Occupancy, citing a drawing that was prepared for Johnson Oyster Company in 2003. It has since been agreed (at the 7/21/07 meeting called by Senator Dianne Feinstein) that the buildings in question are indeed situated properly on the Reservation of Use and Occupancy.

We, therefore, ask you to send the NPS authorization to process and approve the permit applied for in 2005 (plans prepared by William W. Kirsch, and submitted to the CDA, the NPS and the CCC, with revisions dated 7/25/06) to Tod Carr, Marin County Community Development Agency, 3501 Civic Center Drive, #308, San Rafael, CA 94903-4157.

Sincerely yours,

Kevin Lunny

Nancy Lunny

Marin County
Community Development Agency

Alex Hinds, Director

Date 12/8/02

Drake's Oyster Kusch

RE: Building Permit at 17171 Sir Francis Drake.

Assessor's Parcel # 109-130-17

A building permit application was received for the subject property. Upon customary transmittal of the building permit to the Planning Division, it was determined that your application does not conform to certain zoning and/or subdivision requirements. The item(s) checked below must be corrected before the Planning Division will approve your application and send it back to the Building Inspection Division for their review. If a Planning Division permit is required, please attach a copy of this letter to the application. This letter will assist in coordination of building permit processing following Planning Division review.

- ☐ The plot plan is missing/incorrect/has no scale/otherwise incomplete or unclear (see attached).
- ☐ Front/side/street-side/rear yard setbacks for the house/accessory structure are less than permitted (see attached).
- ☐ House/accessory structure exceeds maximum permitted height/number of stories.
- ☐ Proposed work on the floating home/ark will require approval of an architectural deviation/floating home exception (see attached).
- ☐ Ratio of floor area to lot size (FAR) exceeds maximum permitted (30%).
- ☐ Second units not permitted by the zoning on your property.
- ☐ Existing structure/use is nonconforming and its expansion is restricted (see attached).
- ☐ Due to the location and height of the retaining wall(s), a Design Review is required (see attached).
- ☐ A Master Plan is required.
- ☐ A Coastal Permit is required.
- ☐ A Design Review (minor/exemption) is required.
  - ☐ proposed development is not single family residential.
  - ☐ your property is zoned planned district.
  - ☐ your lot is less than half the size required.
    - ☐ ***Therefore, please submit the attached application(s), $_____ in fees and _____ sets of plans to the Planning Division.***
- ☒ Other: Retail space located within reservation under National Park Service. Please provide written approval from National Park Service (Pt. Reyes)

If we do not receive a response within fifteen days from the date of this letter, your building permit application will be considered withdrawn. If an attachment is included, please read it carefully to determine what is needed for project conformance. Please contact Carol Camp 499 6275 if you have any questions regarding this letter. If you wish to meet with the planner, please call for an appointment. Drop-ins are not advised. Thank you.

/FORMS/ORIGIN/BP-CHECK.DOC
(Rev 7/8/99)

3501 Civic Center Drive, #308 - San Rafael, CA 94903-4157 - Telephone (415) 499-6269 - Fax (415) 499-7880

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1149
kevin@drakesbayoyster.com
nancy@drakesbayoyster.com

October 23, 2007

Jon Jarvis
Regional Director
National Park Service
Pacific West Regional Office
One Jackson Center
1111 Jackson Center, Suite 700
Oakland, CA 94607

Re: National Park Service, Clarification of Law, Policy and Science on Drakes Estero

Dear Mr. Jarvis.

On September 18, 2007, you sent the document "*Clarification of Law, Policy, and Science on Drakes Estero*" to Dr. Goodman and have widely circulated it since.

According to your statement, at the bottom of page 5 and top of the following page:

> "With regards to NPS studies within the estero, we wish to clarify points regarding the independence and quality of NPS data. Dr. Goodman questions the quality of the data collected by NPS biologists and others as not independent and not peer-reviewed through published scientific journals. It is true that much of the research within the NPS is applied and often not published in scientific journals; nevertheless, research projects within the NPS are submitted to a rigorous peer-review process that includes scientists from the NPS, other agencies, and academia. An implementation plan is required before a project can begin which requires a detailed description and peer-review of the methods. The protocol development, although not as rigorous as the journal publication process, nevertheless does subject NPS applied

research projects to a significant degree of review intended to insure the quality of the research and the integrity of the findings. The Point Reyes National Seashore Park News publication, "Drakes Estero - A Sheltered Wilderness Estuary," for example was reviewed by scientists from the U.S. Geological Survey and NPS."

This clarification is instructive.

To further assist our understanding of the NPS process regarding the preparation and presentation of research reports, would you provide the following:

(1) **According to your letter and this NPS Statement, "*research projects within the NPS are submitted to a rigorous peer-review process that includes scientists from NPS, other agencies and academia.*"**

(a) When was this peer-review process initiated for the NPS report, "*Drakes Estero, A Sheltered Wilderness Estuary*?"

(b) Identify each NPS scientist who participated in the peer-review process for this report.

(c) Identify each scientist from other agencies who participated in the peer-review process for this report.

(d) Identify each member of academia who participated in the peer-review process for this report.

(e) Provide copies of the instructions and documents provided to each participant in the peer-review process.

(f) Provide reviewer comments pursuant to this process.

(g) Provide the dates of meetings, who attended and participated and copies of the agenda.

(h) In the preparation and publication of the Drakes Estero Report, did NPS fully adhere to Federal policy requirements for peer review?

(2) **According to your Clarification letter, "*an implementation plan is required before a project can begin which requires a detailed description and a peer-review of the methods.*"**

(a) When did this project – the preparation of this report – begin?

(b) When was the required "Implementation Plan" initiated? Completed?

(c) When completed, what was the Implementation Plan approval process and who approved it?

(d) Provide a copy of the implementation plan.

(3) **According to your Clarification letter, "*The protocol development, although not as rigorous as the journal publication process, nevertheless does subject NPS applied research projects to a significant degree of review intended to insure the quality of the research and the integrity of the findings.*"**

(a) Describe the "*protocol development*" as applied to "*Drakes Estero, A Sheltered Wilderness Estuary.*"

(b) Provide copies (or results) of the "protocol development."

(c) When were the protocols approved and who approved them?

(4) **According to the "Clarification" document cited above, at its conclusion, "*The Point Reyes National Seashore Park News publication, "Drakes Estero - A Sheltered Wilderness Estuary," for example was reviewed by scientists from the U.S. Geological Survey and NPS.*"**

(a) Identify the "scientists" from the USGS who participated in the review.

(b) At what point in the process did they initiate their review?

(c) Provide copies of their review and/or their comments in whatever form they were provided.

(d) Identify the "scientists" from the National Park Service in the same review.

(e) When did this review occur?

(f) Provide copies of their review and/or comments on the proposed research project in whatever form they were provided.

(5) **Did anyone else, outside of the NPS, other agencies and/or academia participate in the review and/or preparation of the Drakes Estero Report – at any time during the process? If so, please identify that individual or those individuals.**

As you are aware, the NPS report, "*Drakes Estero, A Sheltered Wilderness Estuary*," is very important and we have spent considerable time and effort to fully understand it. Your responses to these questions assist us in that effort.

Thank you.

Kevin Lunny

Nancy Lunny

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1149
kevin@drakesbayoysters.com
nancy@drakesbayoysters.com

RECEIVED
Point Reyes
National Seashore
OCT 24 '07
SUPT.
SCIENCE
SPEC. PK. USES
LAW ENFORC.
NAT. RES.
RANGE CONS.
FIRE MGT.
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CULT. RES.
MAINT.
CONTRACTING
PERSONNEL
BUDGET
CENTRAL FILES

October 23, 2007

Don Neubacher
Superintendent
Point Reyes National Seashore
One Bear Valley Road
Point Reyes Station, CA 94956

Dear Don.

With regard to the Sarah Allen Trip Reports of April 13 and 26, both include a map. So that we better understand the map – *Drake's Estero Aquaculture and Seal Habitat* – included in these trip reports, would you please respond to the following:

(1) Why is the map undated, unnumbered and without any GIS or other appropriate designation?

(2) When – <u>what day</u> – was this map created?

(3) Please provide the documentation requesting the new map be created and documentation showing which day it was created.

(4) Who ordered the map to be created?

(5) Who drew the lines or ordered the lines to be drawn that depict the seal haulout pupping area?

(6) The lines depicting the haulout area are considerably different when compared to the 92 NMFS-NPS agreement or a map provided by Sarah Allen shortly after we took over the oyster farm. Why was this map changed?

(7) Provide the documentation – reports, documents, memorandum, other information – which justifies the haul out boundary changes on this new map?

(8) Presumably, there is new science which justifies this expanded haul out area. Please provide a full and complete documentation of that new science.

(9) Why was a new map created in the middle of a pupping season?

(10) This map – *this "aquaculture" map* – was not provided to us – your leasee. Why not?

(11) This new map was not provided to California Department of Fish and Game, the agency which manages the lease. Why not?

(12) To whom did you provide copies of this map? Federal agencies? State agencies? Local government? Non-profits or NGOs? Individuals? Provide names, affiliations and contact information.

(13) To whom did you provide copies of the April 13 and/or April 26 Trip Reports which contain this map? Provide names, affiliations and contact information.

Thank you.

Sincerely,

Kevin Lunny

Nancy Lunny

United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807

IN REPLY REFER TO:

A7221(PWR-C)

SEP 28 2007

Mr. Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake Blvd
Inverness, CA 94937

Dear Mr. Lunny:

This letter transmits copies of *Drakes Estero: A Sheltered Wilderness* that were sought under the Freedom of Information Act (FOIA) by two other inquirers. During the FOIA process and prior to our July 21, 2007, meeting, Congresswoman Woolsey wrote this office asking specific questions concerning this document on your behalf.

The FOIA process is now completed with the inquirers.

We are providing you with these same documents in an effort to be transparent in the communications on the Drakes Estero.

Sincerely,

Holly Bundock
Freedom of Information Act Officer

Enclosure

cc: Senator Dianne Feinstein
Congresswoman Lynn Woolsey
George Turnbull, PWR-DRB
Don Neubacher, Supt. PORE

RECEIVED
Point Reyes
National Seashore
OCT 1 - '07
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SCIENCE
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LAW ENFORC.
NAT. RES.
RANGE CONS.
FIRE MGT.
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PERSONNEL
BUDGET
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TAKE PRIDE® IN AMERICA

"Kevin Lunny" <kevin@drakesbayoyster.com>

09/18/2007 06:51 PM

To "Jon Jarvis" <jon_jarvis@nps.gov>

cc "Zachary Walton" <zacharywalton@paulhastings.com>, "George Turnbull" <George_Turnbull@nps.gov>, "Lisa Bush" <lisab@sonic.net>, "David M. Weiman"

bcc

Subject Oyster SUP Meeting

Dear John,

Since we met last we received a number of communications that require review and clarification. We are very anxious to move forward, but in light of these recent communications, we will need a bit more time before we can meet. We will get back to you shortly to discuss an alternative time for our meeting.

Thank you,

Kevin Lunny

United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807

IN REPLY REFER TO:

A90 (PWR-C)

SEP 14 2007

Mr. Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake Blvd.
Inverness, CA. 94937

Dear Mr. Lunny:

It has been six weeks since our meeting at the Olema Inn and our discussions concerning Drakes Estero and your oyster operation. I wrote to you on July 30, 2007 with our action items. It seems appropriate to provide an update of the actions the National Park Service has taken and to reassure you of the positive direction we believe the negotiations for the special use permit are taking.

As you may remember, we agreed July 21 to:

- remove *Drakes Estero: A Sheltered Wilderness* from the park website pending an independent review of scientists – completed
- release data collected at the Estero – completed
- provide chronology of legally significant events – completed
- develop process for an independent science panel – underway
- develop an interim special use permit using the Stevens boundary survey – underway
- confirm that environmental compliance will be paid for by the NPS – confirmed

I remain very pleased with the positive flow of conversation and the willingness of everyone to freely discuss their concerns at our subsequent meetings. Deputy Regional Director George Turnbull and Assistant Field Solicitor Suzanne Boyce Carlson report healthy discussions involving the special use permit for the oyster operation.

They have suggested I assure you that we have every intention of allowing your operation to continue until November of 2012, as provided under the terms of the Reservation of Use and Occupancy and in compliance with a valid special use permit.

We recognize your right to operate until November of 2012 under the terms of the Reservation of Use and Occupancy. For the portion of your operation that is outside the area governed by the Reservation, our laws and policies also require that a private activity like Drakes Bay Oyster Company operate under a special use permit to authorize the activity on park land while assuring the protection of the park's resources and values.

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As we have discussed, we are prepared to offer you an interim permit while we complete the NEPA compliance required for the longer term permit. We are committed to completing the NEPA compliance as quickly as possible, but we are not certain how long it will take. Therefore, the term of the interim permit will be two years, unless the longer-term permit is ready before that time.

Senator Feinstein's staff has asked, too, that we explain to you that the mitigations we have been discussing in negotiations to date are based upon the known environmental conditions of which both you and the NPS are aware. The interim permit will require these mitigations and other provisions to assure compliance with applicable laws pending completion of the environmental compliance. Some of these mitigations include protection of harbor seals and eelgrass, control of exotic species, determination of an annual production limit, appropriate limits on new construction, and limits on the introduction of species of oysters and clams beyond those described in existing leases with the California Department of Fish and Game. To this end, we ask that negotiations continue based on the last draft of the interim permit that we sent to you on August 23, 2007.

It is our intention to work with you within the parameters and time frame of the environmental assessment. As you know, in response to your request we also are seeking an independent science review of Drakes Bay Oyster Company oyster operations on Drakes Estero. It is our hope that this review will be completed by the summer and provide useful information for the environmental assessment.

Our public affairs office has fielded a number of questions concerning the compliance issue, the data collection complaint, the independent science review, as well as the various Freedom of Information Act requests. To help respond to these inquiries, we have produced a "frequently asked questions" sheet, which we enclose for your reference.

In closing, you have my commitment that the NPS will work fairly with you to respect the terms of the Reservation of Use and Occupancy and to complete the permitting process for activities on park property. We look forward to our next meeting and hope we will be signing the interim special use permit for the oyster operation in the next two weeks.

Sincerely,

Jonathan B. Jarvis
Regional Director, Pacific West Region

Enclosures (2)

cc: Senator Dianne Feinstein
Congresswoman Lynn Woolsey
Don Neubacher, Superintendent, Point Reyes
Suzanne Boyce Carlson, Assistant Field Solicitor

Frequently Asked Questions
Oyster operations at Drakes Estero
Point Reyes National Seashore

What triggers NEPA compliance?

NEPA—the National Environmental Policy Act—is the basic national charter for environmental protection. It requires an interdisciplinary study of impacts associated with major federal actions, and it emphasizes public involvement. It ensures that federal agencies fully consider the environmental costs and benefits of the proposed actions before they make any decision to undertake the actions.

An Environmental Screening Form, attached, aids a National Park Service (NPS) manager in determining what level of NEPA compliance must be completed: (1) categorical exclusion (for actions with no measurable impacts on the environment), (2) environmental assessment (to determine whether an action may have a significant impact and thus require preparation of an environmental impact statement), or (3) environmental impact statement (for actions with a potential significant impact). Some of the factors triggering preparation of an environmental assessment or environmental impact statement include whether the environmental effects of the proposed action are highly controversial or uncertain; whether the proposed action is in proximity to park lands, wetlands, wilderness areas, or floodplains; whether the action may affect endangered or threatened species; and whether the action may implicate non-native invasive species (see "Mandatory Criteria" in Environmental Screening Form, attached).

Why did NPS do an Environmental Assessment in 1998?

The Johnson Oyster Company (JOC) operated the facility at Drakes Estero in 1998. JOC proposed an expansion of their land based facilities on the JOC Reservation of Use and Occupancy at Point Reyes National Seashore (approximately 1.5 onshore acres), including the construction of a new oyster processing plant, the replacement and rehabilitation of several accessory structures, and the moving of all facilities 100 feet back from the water. The NPS prepared the EA to analyze the impacts of this proposal.

Did the 1998 EA address production levels, seek a biological opinion, and outline impacts on estuarine and water quality?

The proposal analyzed in the 1998 EA involved only land based facilities. Thus, when the 1998 EA examined impacts on water resources, it only looked at those impacts that might result from the land-based activities. For example, the EA discusses impacts to the estero that could result from runoff associated with ground disturbance and grading during construction, and it discusses construction of drainage systems to avoid contamination of the estero from the land-based facilities. However, the 1998 EA itself contains no analysis of the impacts of the water-based operations. For example, the 1998 EA does not discuss whether oyster growing operations in the estero had impacts, whether positive or negative, on water quality, wildlife, or any other natural resources.

The "Finding of No Significant Impact" or FONSI does contain some discussion of production levels in the estero in the context of discussing public comments that were received during the public comment period conducted by the NPS and Marin County. The FONSI explains that three of the comment letters expressed concern that the proposed new facilities might create additional growth in the overall oyster operation in the estero. In the context of discussing this public comment, the FONSI states that JOC had voluntarily agreed not to exceed an annual production of 700,000 lbs of oyster weight. Thus, the FONSI addresses production levels in the context of discussing public comments, but the EA itself contains no analysis of the water-based operations.

Why is NEPA triggered as part of a Special Use Permit for the Drakes Bay Oyster Company?

In 2005, the Drakes Bay Oyster Company (DBOC) purchased the remaining seven years of the Reservation of Use and Occupancy from the Johnson Oyster Company. NPS notified DBOC before the purchase that the commercial oyster operation allowed by the Reservation of Use and Occupancy could not be extended beyond the expiration of the Reservation of Use and Occupancy in 2012, and various activities involved in the commercial oyster operation (particularly those on park lands outside the Reservation) would require a Special Use Permit.

NEPA requires at least an environmental assessment be conducted for two primary reasons. First, NEPA requires analysis of the impacts of the water-based operations. The California Department of Fish and Game has recently recognized that the Drakes Bay Oyster Company mariculture operation in the estero "is properly within the primary management authority of [Point Reyes National Seashore], not the Department." CDF&G Letter, dated May 15, 2007. Thus, an NPS Special Use Permit is required for the water-based operations. Because prior NEPA compliance did not evaluate impacts from the water-based operations, an environmental assessment is required to examine such impacts.

Second, if any of the "Mandatory Criteria" set forth in the NPS environmental screening apply, the NPS cannot issue a categorical exclusion. As set forth above, Mandatory Criteria include whether the environmental effects of the proposed action are highly controversial or uncertain; whether the proposed action is in proximity to park lands, wetlands, wilderness areas, or floodplains; whether the action may affect endangered or threatened species; and whether the action may implicate non-native invasive species.

Why is a Special Use Permit proposed for an interim period?

The NPS is responsible for administering Point Reyes National Seashore and other units of the National Park System to protect their resources and values and to provide for their enjoyment. The NPS requires that a private activity on park land, like DBOC's oyster business, operate under a special use permit that authorizes the activity while assuring protection of the park's values and purposes. DBOC does not currently have a permit.

Therefore, to provide immediate authorization to DBOC and protection to the park, NPS has offered an interim permit to address key operational issues while NPS completes the required NEPA compliance for the longer term. An interim permit would also allow DBOC to move forward expeditiously with permits that it needs from State agencies.

What are Harbor Seal Protocols?

In 1992, an agreement between the park and Johnson Oyster Company resulted in guidelines or a protocol for working in Drakes Estero and around pinnipeds (seals). There have been changes to the Estero animal populations since the protocol was developed fifteen years ago. As a consequence, visitor activities, commercial activities, and NPS activities have to adjust to these changes. The animals are protected by the Marine Mammal Protection Act. The 1992 protocol can be a start to developing a protocol for working in Drakes Estero around pinnipeds today.

What standards does the NPS use to store scientific data?

Microsoft Access is the NPS standard for natural resource data sets, adopted specifically by the Inventory and Monitoring Program, nationwide. See http://www1.nature.nps.gov/im/units/sfan/reports/Monitoring_Plan/SFAN_DMP_v2.pdf

What is an independent science review?

The NPS will seek and pay for a review by the National Academy of Science's Natural Research Council of the ecological effects of DBOC's operations on Drake's Estero, Point Reyes National Seashore. It is expected that a review could take up to nine months to complete its analysis.

What is a complaint against Director's Order 11B, Ensuring Quality Information Disseminated by the National Park Service?

This is a complaint filed on August 23, objecting to a Park news report that is no longer on the Point Reyes National Seashore website. NPS has acknowledged receipt of the complaint and will respond to the complaint within 60 days. This is the first complaint NPS has received under Director's Order 11B.

ENVIRONMENTAL SCREENING FORM (ESF)

(Revised June 2004, per DM)

This form should be attached to all NEPA documents sent to the regional director's office for signature. Sections A and B should be filled out by the project initiator (may be coupled with other park project initiation forms). Sections C, D, E, and G are to be completed by the interdisciplinary team members. While you may modify this form to fit your needs, you must ensure that the form includes information detailed below and must have your modifications reviewed and approved by the regional environmental coordinator. To access this form and other compliance project information, go to http://pepc.nps.gov.

A. PROJECT INFORMATION

Park Name _____ Project/PMIS Number _____

Project Type (*Check*): ☐ Cyclic ☐ Cultural Cyclic ☐ Repair/Rehab ☐ ONPS
☐ NRPP ☐ CRPP ☐ FLHP
☐ Line Item ☐ Fee Demo ☐ Concession Reimbursable
☐ Other (specify) _____

Project Location _____

Project Originator/Coordinator _____

Project Title _____

Contract # _____ Contractor Name _____

Administrative Record Location _____

Administrative Record Contact _____

B. PROJECT DESCRIPTION/LOCATION *(To begin the statutory compliance file, attach to this form, maps, site visit notes, agency consultation, data, reports, categorical exclusion form (if relevant), or other relevant materials.)*

_____

_____

_____

_____

Preliminary drawings attached? ☐ Yes ☐ No Background info attached? ☐ Yes ☐ No

Date form initiated _____ Anticipated compliance completion date _____

Projected advertisement/Day labor start _____ Projected construction start _____

Is project a hot topic (controversial or sensitive issues that should be brought to attention of Regional Director)?
☐ Yes ☐ No

C. RESOURCE EFFECTS TO CONSIDER *(Please see section F, Instructions for Determining Appropriate NEPA Pathway, prior to completing this section. Also use the process described in DO-12, 2.9 and 2.10; 3.5(G) to (G)(5) and 5.4(F) to help determine the context, duration, and intensity of effects on resources.)*

	Identify potential effects to the following physical, natural, or cultural resources	No Effect	Negligible Effects	Minor Effects	Exceeds Minor Effects	Data Needed to Determine
1	Geological resources – soils, bedrock, streambeds, etc.					
2	From geohazards					
3	Air quality					
4	Soundscapes					
5	Water quality or quantity					
6	Streamflow characteristics					

ENVIRONMENTAL SCREENING FORM (ESF)

(Revised June 2004, per DM)

-continued-

	Identify potential effects to the following physical, natural, or cultural resources	No Effect	Negligible Effects	Minor Effects	Exceeds Minor Effects	Data Needed to Determine
7	Marine or estuarine resources					
8	Floodplains or wetlands					
9	Land use, including occupancy, income, values, ownership, type of use					
10	Rare or unusual vegetation – old growth timber, riparian, alpine					
11	Species of special concern (plant or animal; state or federal listed or proposed for listing) of their habitat					
12	Unique ecosystems, biosphere reserves, World Heritage Sites					
13	Unique or important wildlife or wildlife habitat					
14	Unique, essential or important fish or fish habitat					
15	Introduce or promote non-native species (plant or animal)					
16	Recreation resources, including supply, demand, visitation, activities, etc.					
17	Visitor experience, aesthetic resources					
18	Archeological resources					
19	Prehistoric/historic structures					
20	Cultural landscapes					
21	Ethnographic resources					
22	Museum collections (objects, specimens, and archival and manuscript collections)					
23	Socioeconomics, including employment, occupation, income changes, tax base, infrastructure					
24	Minority and low income populations, ethnography, size, migration patterns, etc.					
25	Energy resources					
26	Other agency or tribal use plans or policies					
27	Resource, including energy, conservation potential, sustainability					
28	Urban quality, gateway communities, etc.					
29	Long-term management of resources or land/resource productivity					
30	Other important environmental resources (e.g., geothermal, paleontological resources)?					

Comments _____

_____

_____

D. MANDATORY CRITERIA

Mandatory Criteria: If implemented, would the proposal:	Yes	No	Comment or Data Needed to Determine
A. Have significant impacts on public health or safety?			
B. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas?			
C. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources (NEPA section 102(2)(E))?			
D. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?			
E. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?			
F. Have a direct relationship to other actions with individually insignificant, but cumulatively significant, environmental effects?			
G. Have significant impacts on properties listed or eligible for listing on the National Register of Historic Places, as determined by either the bureau or office?			
H. Have significant impacts on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species?			
I. Violate a federal law, or a state, local, or tribal law or requirement imposed for the protection of the environment?			
J. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898)?			
K. Limit access to and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007)?			
L. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112)?			

For the purposes of interpreting these procedures within the NPS, any action that has the potential to violate the NPS Organic Act by impairing park resources or values would constitute an action that triggers the DOI exception for actions that threaten to violate a federal law for protection of the environment.

E. OTHER INFORMATION *(Please answer the following questions/provide requested information.)*

Are personnel preparing this form familiar with the site? ☐ Yes ☐ No

Did personnel visit site? ☐ Yes ☐ No *(If yes, attach meeting notes re: when site visit took place, who attended, etc.)*

Is the project in an approved plan such as a General Management Plan or an Implementation Plan with an accompanying NEPA document? ☐ Yes ☐ No If so, plan name _____

Is the project still consistent with the approved plan? ☐ Yes ☐ No

(If no, you may need to prepare plan/EA or EIS.)

Is the environmental document accurate and up-to-date? ☐ Yes ☐ No

(If no, you may need to prepare plan/EA or EIS.)

FONSI ☐ ROD ☐ *(Check one)* Date approved _____

Are there any interested or affected agencies or parties? ☐ Yes ☐ No

Did you make a diligent effort to contact them? ☐ Yes ☐ No ☐ NA

Has consultation with all affected agencies or tribes been completed? ☐ Yes ☐ No ☐ NA *(If yes, attach additional pages re: consultations, including the name, dates, and a summary of comments from other agencies or tribal contacts.)*

Are there any connected, cumulative, or similar actions as part of the proposed action (e.g., other development projects in area or identified in GMP, adequate/available utilities to accomplish project)? ☐ Yes ☐ No *(If yes, attach additional pages detailing the other actions.)*

F. INSTRUCTIONS FOR DETERMINING APPROPRIATE NEPA PATHWAY

First, always check DO-12, section 3.2, "Process to Follow," in determining whether the action is categorically excluded from additional NEPA analyses. Other sections within DO-12, including sections 2.9 and 2.10; 3.5; 4.5(G) and (G)(5); and 5.4(F), should also be consulted in determining the appropriate NEPA pathway. Complete the following tasks: conduct a site visit or ensure that staff is familiar with the site's specifics; consult with affected agencies, and/or tribes, and interested public; and complete this environmental screening form.

If your action is described in DO-12, section 3.3, "CEs for Which No Formal Documentation is Necessary," follow the instructions indicated in that section.

If your action is not described in DO-12, section 3.3, and IS described in section 3.4, AND you checked YES or identified "data needed to determine" impacts in any block in section D (Mandatory Criteria), this is an indication that there is potential for significant impacts to the human environment, therefore you must prepare an EA or EIS or supply missing information to determine context, duration, and intensity of impacts.

If your action is described in section 3.4 and NO is checked for all boxes in section D (Mandatory Criteria), AND there are either no effects or **all** of the potential effects identified in Section C (Resource Effects to Consider) are no more than minor intensity, usually there is no potential for significant impacts and an EA or EIS is not required. If, however, during internal scoping and further investigation, resource effects still remain unknown, or are at the minor to moderate level of intensity, and the potential for significant impacts may be likely, an EA or EIS is required.

In all cases, data collected to determine the appropriate NEPA pathway must be included in the administrative record.

G. INTERDISCIPLINARY TEAM SIGNATORIES *(All interdisciplinary team members must sign.) By signing this form, you affirm the following: you have either completed a site visit or are familiar with the specifics of the site; you have consulted with affected agencies and tribes; and you, to the best of your knowledge, have answered the questions posed in the checklist correctly.*

Interdisciplinary Team Leader Name	Discipline/Field of Expertise	Date
Technical Specialists Names	**Discipline/Field of Expertise**	**Date**

H. SUPERVISORY SIGNATORY

Based on the environmental impact information contained in the statutory compliance files and in this environmental screening form, environmental documentation for the subject project is complete. If the project involves hot topics or sensitive issues, I have briefed the deputy or regional director.

Recommended:

Compliance Specialist	Telephone Number	Date

Approved:

Superintendent	Telephone Number	Date

"Kevin Lunny"
<kevin@drakesbayoyster.com>
09/12/2007 03:50 PM

To <George_Turnbull@nps.gov>
cc <Jon_Jarvis@nps.gov>, <Holly_Bundock@nps.gov>, "'Walker, Michael \(Feinstein\)'" <Michael_Walker@feinstein.senate.gov>, "'Walton, Zachary
bcc
Subject RE: Proposed SUP Meeting

History: This message has been replied to.

Dear George,

Thank you for the note. I will talk to our team to see if they are available.

Please include David Weiman and Zachary Walton in all your correspondence with us regarding the Drakes Bay Oyster Farm and the G Ranch.

Thank you,

Kevin

-----Original Message-----
From: George_Turnbull@nps.gov [mailto:George_Turnbull@nps.gov]
Sent: Tuesday, September 11, 2007 6:06 PM
To: Kevin Lunny
Cc: Jon_Jarvis@nps.gov; Holly_Bundock@nps.gov; Walker, Michael (Feinstein)
Subject: Proposed SUP Meeting

Hi Kevin,

Thank you for taking the time to meet with us on the Drakes Bay Oyster SUP and other issues yesterday. After further conversations with the Regional Director and Senator Feinstein's staff, I would like to propose meeting with you and your team again next week to see if we can finalize an SUP within the next couple of weeks. Once again, we do still feel NEPA compliance is required, but we would offer you a two year interim permit. We would like to specifically discuss mitigation measures that might be included in the SUP, all of which we have discussed in our earlier session. Mr. Michael Walker from Senator Feinstein's office has offered to participate in the meeting to help broker an agreement. I am available all day September 18 (Tuesday) and September 20 (Thursday). Hopefully you are available one or both of these days so we can continue to make progress towards an agreement on an SUP. Let me know either way about your availability. Thanks again.

George Turnbull

George Turnbull/OAKLAND/NPS
09/11/2007 05:40 PM PDT

To "Kevin Lunny" <kevin@drakesbayoyster.com>
cc Jon Jarvis/OAKLAND/NPS, Holly Bundock/OAKLAND/NPS, "Walker, Michael (Feinstein)" <Michael_Walker@feinstein.senate.gov>
bcc carlsondo(b) (6) [redacted]
Subject Proposed SUP Meeting

Hi Kevin,

Thank you for taking the time to meet with us on the Drakes Bay Oyster SUP and other issues yesterday. After further conversations with the Regional Director and Senator Feinstein's staff, I would like to propose meeting with you and your team again next week to see if we can finalize an SUP within the next couple of weeks. Once again, we do still feel NEPA compliance is required, but we would offer you a two year interim permit. We would like to specifically discuss mitigation measures that might be included in the SUP, all of which we have discussed in our earlier session. Mr. Michael Walker from Senator Feinstein's office has offered to participate in the meeting to help broker an agreement. I am available all day September 18 (Tuesday) and September 20 (Thursday). Hopefully you are available one or both of these days so we can continue to make progress towards an agreement on an SUP. Let me know either way about your availability. Thanks again.

George Turnbull

United States Department of the Interior

NATIONAL PARK SERVICE
Point Reyes National Seashore
Point Reyes, California 94956

D5031
XL1425 02.106
September 6, 2007

Mr. Kevin Lunny
17171 Sir Francis Drake
Inverness, CA 94937

Dear Kevin:

Paul Robinson with the United States Public Health Service (USPHS) conducted inspections of ranch employee housing units in Point Reyes National Seashore on June 13th and June 14th 2007. Point Reyes National Seashore Special Park Uses Coordinator, Kevin McKay, accompanied CDR Robinson on the inspections. In a report submitted to the Park CDR Robinson noted that many recommendations and deficiencies from past ranch inspections had been addressed. We truly appreciate the efforts that have been made to improve the quality of ranch employee housing. This is an issue that we know to be important to the community in and around Point Reyes National Seashore and we ask that you continue to be diligent in devoting attention to the maintenance of safe and healthy employee housing.

The inspection of employee housing at Drakes Bay Oyster Company revealed the following items requiring attention. Comments marked with an asterisk (*) indicate recommendations made in previous surveys that remain uncorrected. Additional asterisks indicate the number of years a deficiency has appeared in the inspection report.

Drakes Bay Oyster Company

<u>Water and Wastewater Systems</u>

The water system provides potable water to the residences and the packing house. It consists of a drilled well located on the slope above the residences, a hydropneumatic tank, and distribution piping. The well is reported to have an adequate sanitary seal, and there are no apparent sources of contamination within a 50 foot radius. Chlorination of the water is not done. Periodic bacteriological testing is done, with no positive results reported.

A communal wastewater system serves the residences and the packing house toilet. The packing house currently does not have a means of disposing process waste, so no processing is done on-site. The wastewater system consists of gravity sewage collection lines, five septic tanks, two lift stations, forcemain, and gravity fed leachfield. Sewage flows by gravity from the homes to the septic tanks where solids are removed. The effluent is then pumped from the lift stations via forcemain to the leachfield. The leachfield consists of four separate

In order to ensure that deficiencies are corrected in a timely manner, Point Reyes National Seashore Staff will be contacting you regarding progress on repairs and scheduling of any follow up visit. Please notify Kevin McKay, (415) 464-5111, if you have questions or concerns. Thank you for your continued efforts and cooperation.

Sincerely,

Don L. Neubacher
Superintendent

KEMcKay:kem 9/4/07

"Kevin Lunny"
<kevin@drakesbayoyster.com>

08/31/2007 01:01 PM

To <George_Turnbull@nps.gov>, "Kevin Lunny" <kevin@drakesbayoyster.com>
cc "David M. Weiman" <agresources@erols.com>, <Don_Neubacher@nps.gov>, "Holly Bundock" <Holly_Bundock@nps.gov>, <Jon_Jarvis@nps.gov>, "Kevin
bcc
Subject RE: Meeting on Special Use Permit

Sounds good. See you on the 10th.

Kevin

-----Original Message-----
From: George_Turnbull@nps.gov [mailto:George_Turnbull@nps.gov]
Sent: Friday, August 31, 2007 12:43 PM
To: Kevin Lunny
Cc: David M. Weiman; Don_Neubacher@nps.gov; Holly Bundock; Jon_Jarvis@nps.gov; Kevin Lunny; Lisa Bush
Subject: RE: Meeting on Special Use Permit

Kevin, how about if Suzanne and I meet with you at 11 am on Monday, September 10 at your facility?

Getting us your comments on the SUP on Wednesday, September 5 would be great.

Talk to you soon...

George

"Kevin Lunny"
<kevin@drakesbayoyster.com>

08/31/2007 11:02 AM MST

To
"Kevin Lunny" <kevin@drakesbayoyster.com>, <George_Turnbull@nps.gov>
cc
"David M. Weiman" <agresources@erols.com>, "Holly Bundock" <Holly_Bundock@nps.gov>, "Lisa Bush" (b) (6) [redacted] <Jon_Jarvis@nps.gov>, <Don_Neubacher@nps.gov>
Subject
RE: Meeting on Special Use Permit

George,

Any time on September 10th will work for us - after 10:00AM preferred. We will get our SUP comments to you by Wednesday the 5th.

Thank you,

Kevin

-----Original Message-----
From: George_Turnbull@nps.gov [mailto:George_Turnbull@nps.gov]
Sent: Thursday, August 30, 2007 5:17 PM
To: Kevin Lunny
Cc: agresources; Don_Neubacher@nps.gov; Jon_Jarvis@nps.gov; Lisa Bush; Holly Bundock
Subject: Re: Meeting on Special Use Permit

Kevin,
Suzanne Boyce Carlson and I are available to meet you Thursday September 6 in the morning or anytime Monday September 10. Let me know if either of these dates work. If not, give me a range of other dates that might work. Also, it would be helpful if you could provide us a list of any concerns you might have with the draft provisions of the SUP we provided you. We also look forward to an agreement soon.

George
Sent from my Blackberry
George Turnbull
510-817-1435

----- Original Message -----
From: "Kevin Lunny" [kevin@drakesbayoyster.com]
Sent: 08/29/2007 08:11 AM MST
To: George Turnbull; "Kevin Lunny" <kevin@drakesbayoyster.com>
Cc: <agresources@erols.com>; Don Neubacher; Jon Jarvis; "Lisa Bush"
(b) (6) [redacted]
Subject: RE: Meeting on Special Use Permit

George,

Thank you for giving us a few more days to go over the SUP. Please feel free to schedule a meeting at your earliest convenience. We look forward to
an agreement on the SUP soon.

A copy of the "Record of Agreement Regarding Drakes Estero Oyster Farming and Harbor Seal Protection" will be sent to you today.

Kevin

-----Original Message-----
From: George_Turnbull@nps.gov [mailto:George_Turnbull@nps.gov]
Sent: Friday, August 24, 2007 4:03 PM
To: Kevin Lunny
Cc: agresources@erols.com; Don_Neubacher@nps.gov; Jon_Jarvis@nps.gov;

Lisa Bush
Subject: RE: Meeting on Special Use Permit

Kevin,

Thanks for letting me know. Keep me posted on when you might be available to meet. I am out of the office all next week but back September 4.

George

"Kevin Lunny"
<kevin@drakesbayo
yster.com>

08/24/2007 03:44
PM MST

To
<George_Turnbull@nps.gov>

cc
"Lisa Bush" (b) (6) [redacted] >,
<agresources@erols.com>,
<Don_Neubacher@nps.gov>,
<Jon_Jarvis@nps.gov>

Subject
RE: Meeting on Special Use Permit

Hello George,

I'm sorry for taking all day to respond to your note. We have tried to meet
with our attorney, Judy Davidoff, to review the proposed SUP. Unfortunately,
she does not have the time to review the document before Monday. We have been advised to postpone our meeting that is scheduled for Monday 08/27/07 as we need time to review the SUP proposal.

Thank you,

Kevin

-----Original Message-----
From: George_Turnbull@nps.gov [mailto:George_Turnbull@nps.gov]
Sent: Thursday, August 23, 2007 3:53 PM
To: kevin@drakesbayoyster.com
Cc: Jon_Jarvis@nps.gov; Don_Neubacher@nps.gov; agresources@erols.com
Subject: Meeting on Special Use Permit

Hi Kevin,

I'm back in the office and wanted to confirm that we are meeting at your site on Monday, August 27 at 11 am to continue our discussion on special use permit terms. We are proposing to bring Suzanne Boyce Carlson (the attorney from our Solicitor's office), myself, and, as you requested at the last meeting, Don Neubacher. Jon Jarvis is out of town and will be unable to attend. Please let us know who you plan to have in attendance. We would like to propose that since we will be at your site that we would initially tour your facility onshore. Because of NPS management policies regarding wilderness, we will not be able to go on a boat. After this, we thought we might break for lunch and then reconvene to discuss the permit. A conference room is available at Point Reyes NS headquarters if you would like to meet there. I have to catch a plane and will have to leave at 3 pm, as will Suzanne.

Attached is a pdf file that represents the editorial changes we discussed at our last meeting. These changes should be shown in green. This document can be the starting point for our discussions. We were also hoping that you might send us the harbor seal monitoring protocol you referred to in our discussions in section 3j.

We look forward to seeing you Monday morning.

George Turnbull

(See attached file: DrakesBayOysterSUP Draft 8.22.07.pdf)

George Turnbull/OAKLAND/NPS
08/31/2007 12:43 PM

To "Kevin Lunny" <kevin@drakesbayoyster.com>
cc "David M. Weiman" <agresources@erols.com>, Don_Neubacher@nps.gov, "Holly Bundock" <Holly_Bundock@nps.gov>, Jon_Jarvis@nps.gov, "Kevin carlsondo(b) (6)
bcc
Subject RE: Meeting on Special Use Permit

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"Kevin Lunny" <kevin@drakesbayoyster.com>

"Kevin Lunny" <kevin@drakesbayoyster.com>
08/31/2007 11:02 AM MST

To "Kevin Lunny" <kevin@drakesbayoyster.com>, <George_Turnbull@nps.gov>
cc "David M. Weiman" <agresources@erols.com>, "Holly Bundock" <Holly_Bundock@nps.gov>, "Lisa Bush" (b) (6) <Jon_Jarvis@nps.gov>, <Don_Neubacher@nps.gov>
Subject RE: Meeting on Special Use Permit

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George
Sent from my Blackberry
George Turnbull
510-817-1435

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Sent: 08/29/2007 08:11 AM MST
To: George Turnbull; "Kevin Lunny" <kevin@drakesbayoyster.com>
Cc: <agresources@erols.com>; Don Neubacher; Jon Jarvis; "Lisa Bush"
(b) (6) [redacted]
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Sent: Friday, August 24, 2007 4:03 PM
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Cc: agresources@erols.com; Don_Neubacher@nps.gov; Jon_Jarvis@nps.gov; Lisa Bush
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George

"Kevin Lunny"
<kevin@drakesbayoyster.com>

08/24/2007 03:44 PM MST

To
<George_Turnbull@nps.gov>

cc
"Lisa Bush" (b) (6) [redacted]
<agresources@erols.com>,
<Don_Neubacher@nps.gov>,
<Jon_Jarvis@nps.gov>

Subject
RE: Meeting on Special Use Permit

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Sent: Thursday, August 23, 2007 3:53 PM
To: kevin@drakesbayoyster.com
Cc: Jon_Jarvis@nps.gov; Don_Neubacher@nps.gov; agresources@erols.com
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We look forward to seeing you Monday morning.

George Turnbull

(See attached file: DrakesBayOysterSUP Draft 8.22.07.pdf)

"Kevin Lunny"
<kevin@drakesbayoyster.com>

08/13/2007 04:58 PM

To <George_Turnbull@nps.gov>
cc
bcc
Subject RE: Drakes Bay Oyster Farm SUP

George,

Thank you. We look forward to seeing the updated SUP as soon as it can be arranged so that we can have some time to review it before our meeting on the 27th.

Have a great vacation!

Kevin

-----Original Message-----
From: George_Turnbull@nps.gov [mailto:George_Turnbull@nps.gov]
Sent: Monday, August 13, 2007 4:15 PM
To: Kevin Lunny
Subject: Re: Drakes Bay Oyster Farm SUP

Kevin, thanks for the email. As I think I mentioned the other day, I will be on vacation from today until next Thursday (August 23) when I return. I look forward to meeting with you on August 27. Your attorney is more than welcome to attend the meeting. Your three points are interesting. We can provide a fuller discussion of NEPA compliance at the meeting. As you may imagine, we take a different point of view on these issues. I was not at the meeting with Senator Feinstein, but I was told that it was agreed that some level of NEPA compliance was required as a condition of developing this permit.

When I return, we will forward you a revised SUP based on the discussions last week. I look forward to further discussions with you on this matter

George Turnbull

"Kevin Lunny"
<kevin@drakesbayoyster.com>

08/13/2007 02:38 PM MST

To "George Turnbull" <George_Turnbull@nps.gov>
cc
Subject Drakes Bay Oyster Farm SUP

Dear George.

This is a partial response to the new NPS' proposed permit. A more comprehensive response will be forthcoming as we proceed.

Now that we better understand the new NPS permit proposal, we are beginning to review it. Last Tuesday's meeting helped explain your new proposal.

With regard to the NPS' new requirement that an Environmental Assessment (EA) is required, our discussion concluded:

(1) None of the four draft SUPs previously prepared by the Superintendent required an EA. In fact, NPS, in each draft previously submitted, stated that (at the bottom of the first page) "NEPA & NHPA Compliance: CATEGORICALLY EXCLUDED..." is marked with an "x" indicating that it was not required.

(2) NPS indicated that the justification for the EA was based on the NPS determination that Drakes Bay Oyster Company (DBOC) was "expanding" the oyster farm. As discussed in some detail, DBOC is not expanding production. As a general proposition, today (two and a half years after the purchase of DBOC), shellfish production is roughly one-third of that in the 1990's under the previous owner.

(3) NPS further indicated that justification for the EA was based on the need for environmental review. As discussed, an EA was finalized in May 1998 in partnership with the County of Marin -- and a Finding of No Significant Impact (FONSI) was approved. This was initiated when the NPS proposed that the current site be rebuilt and redesigned, new buildings constructed and the entire oyster operation upgraded. We showed you the document and, in particular, the drawings of the new building complex, proposed to be 12,000 square feet (about three-to-four times the current onshore footprint).

At our meeting, neither you, Mr. Jarvis or the Solicitor were aware of these three matters..

Based on the above, the provisions in the proposed SUP can now be deleted..

One additional matter. We were not informed that a representative of the Solicitor's Office would be attending this meeting. Had we known, we would have had our attorney present.

We appreciate the time and effort to discuss these many new provisions.

Kevin and Nancy Lunny

George Turnbull/OAKLAND/NPS
08/13/2007 04:15 PM

To "Kevin Lunny" <kevin@drakesbayoyster.com>
cc
bcc Jon Jarvis/OAKLAND/NPS
Subject Re: Drakes Bay Oyster Farm SUP

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George Turnbull

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"Kevin Lunny" <kevin@drakesbayoyster.com>
08/13/2007 02:38 PM MST

To "George Turnbull" <George_Turnbull@nps.gov>
cc
Subject Drakes Bay Oyster Farm SUP

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Kevin and Nancy Lunny

George Turnbull/OAKLAND/NPS
08/03/2007 03:48 PM

To "Kevin Lunny" <kevin@drakesbayoyster.com>
cc "David M. Weiman" <agresources@erols.com>, "Jon Jarvis" <jon_jarvis@nps.gov>
bcc
Subject Re:

Hi Kevin,

Jon Jarvis (after discussions today with Mr. Weiman) asked that I set a meeting up for Tuesday, August 7 in the afternoon to go through provisions of the revised Special Use Permit (SUP) we have sent to you (sorry it was undated, it should have been dated July 30, 2007). We propose to meet with you in San Francisco on Tuesday at 2 pm at Building E in lower Fort Mason (San Francisco Maritime NHS headquarters - second floor). I can send you specific directions if you like. I am also working to provide the material you requested below, hopefully in advance of the meeting. I am assuming the earlier SUP you are referring to was the one sent to you on December 20, 2005?

Please let me know if you are available. I know Jon's schedule is particularly challenging so hopefully the time/date will work.

I look forward to meeting with you.

George Turnbull
Deputy Regional Director
Pacific West Region
510/817-1435

"Kevin Lunny" <kevin@drakesbayoyster.com>

"Kevin Lunny" <kevin@drakesbayoyster.com>
08/03/2007 09:37 AM MST

To "Jon Jarvis" <jon_jarvis@nps.gov>
cc "David M. Weiman" <agresources@erols.com>, "George Turnbull" <George_Turnbull@nps.gov>
Subject

Dear Jon,

This will acknowledge receipt of your letter, undated (A90(PWR-C) which contained a draft SUP.

A quick read indicates that numerous changes have been made to this proposed SUP as compared to the SUP previously submitted.

So that we have a comprehensive understanding of this new proposal, would you please itemize the changes, and provide an explanation for each.

I would like to meet next week to discuss this proposal and therefore need the clarification about the new proposal as soon as possible.

Thank you,

Kevin Lunny
Drakes Bay Oyster Farm

"Kevin Lunny" <kevin@drakesbayoyster.com>

08/03/2007 09:37 AM

To "Jon Jarvis" <jon_jarvis@nps.gov>

cc "David M. Weiman" <agresources@erols.com>, "George Turnbull" <George_Turnbull@nps.gov>

bcc

Subject

History: This message has been replied to and forwarded.

Dear Jon,

This will acknowledge receipt of your letter, undated (A90(PWR-C) which contained a draft SUP.

A quick read indicates that numerous changes have been made to this proposed SUP as compared to the SUP previously submitted.

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Thank you,

Kevin Lunny
Drakes Bay Oyster Farm

United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807

IN REPLY REFER TO:
A90(PWR-C)
L3019
SOP Lunny
L1425
02.106

7.30.07

RECEIVED
Point Reyes
National Seashore
AUG 1 '07
SUPT.
SCIENCE
SPEC. PK. USES
LAW ENFORC.
NAT. RES.
RANGE CONS.
FIRE MGT.
INTERP.
CULT. RES.
MAIN!
CONTRACTING
PERSONNEL
BUDGET
CENTRAL FILES

Mr. Kevin Lunny
Drakes Bay Oyster Company
17300 Sir Francis Drake Blvd.
Inverness, CA 94937

Dear Mr. Lunny:

This transmits a copy of the special use permit for the operation of the Drakes Bay Oyster Company. Once you have endorsed the permit, we will promptly sign it and complete the initial environmental compliance. You will have an interim special use permit to maintain and operate for a period of one year, as we agreed to on Saturday, July 21, 2007. Please return a fully executed copy to the NPS at the above address. During this period, however, no additions to the facilities can be made. In addition, California Coastal Commission approval and permits must be secured for any actions they have jurisdiction over before site actions can be taken.

This letter also summarizes our action items agreed to at the meeting on July 21. The NPS agreed to:

- Remove *Drakes Estero: A Sheltered Wilderness* from the park website pending an independent review of scientists—report removed July 23
- Release data collected at the Estero by August 6
- Provide chronology of legally significant events—attached
- Develop process for an independent science panel—underway
- Develop an interim special use permit using Stevens boundary survey—attached
- Confirm that environmental compliance will be paid for by the NPS—confirmed

Deputy Regional Director George Turnbull is designated as your point of contact for the negotiations for the special use permit. Please contact him at 510-817-1435 if you have any concerns about the enclosed copy of the permit.

Sincerely,

Jonathan B. Jarvis
Regional Director, Pacific West Region

Enclosures

cc: Don Neubacher, Superintendent, Point Reyes
Barbara Goodyear, Field Solicitor

TAKE PRIDE® IN AMERICA

Form 10-114
Rev. Jan. 00

UNITED STATES DEPARTMENT OF THE INTERIOR
National Park Service

Special Use Permit

Name of Use: Aquaculture

Date Permit Reviewed 2007
Reviewed 20
Reviewed 20
Expires 2008

Permit # MISC-8530-6000-7012
Type Park Code No. #

Long Term X
Short Term

Point Reyes National Seashore
Name of Area

Drakes Bay Oyster Company
17171 Sir Francis Drake Blvd.
Inverness, CA 94937
(415) 669-1149

is hereby authorized for a period of one year ("Term") commencing on August 1, 2007 ("Commencement Date") and terminating on July 31, 2008 ("Expiration Date") to use the following described land, improvements, and waters in the following area:

the lands and improvements at Drakes Bay Estero at the former Johnson's Oyster Site consisting of approximately 1.1 acres of land and improvements designated as the "SUP Area" on the map attached hereto as Exhibit B ("Drake's Estero Oysters – SUP & ROP") and the waters designated as the "SUP Area" on the map attached hereto as Exhibit A ("Drake's Estero Oysters: Aquaculture Lease/SUP Area and NPS Resources"). In addition, the Permitter intends to fence off some of the boundaries of the SUP Area shown on Exhibit B, and in the event of any conflict between Exhibit B and fencing provided by the Permitter, the fencing will control. Collectively, the areas so designated shall be referred to as the "Premises."

For the purpose(s) of:

Use of the area designated as the "SUP Area" on the map attached hereto as Exhibit B for the purpose of processing and selling wholesale and retail oysters, seafood and complimentary food items as set forth in Exhibit D, the interpretation of oyster cultivation to the visiting public and residential purposes reasonably incidental thereto. Use of the area designated as the "SUP Area" on the map attached hereto as Exhibit A for the purpose of oyster growing. Collectively, the uses set forth in this paragraph shall be referred to as the "Permitted Uses."

Authorizing legislation or other authority (RE – DO-53): 16 U.S.C. 1, 1a-1, 3 & 459c; the Reservation of Use and Occupancy.

NEPA & NHPA Compliance: CATEGORICALLY EXCLUDED __ EA/FONSI __ EIS __ OTHER APPROVED PLANS

PERFORMANCE BOND:	Required	Not Required	X	Amount:
LIABILITY INSURANCE:	Required X	Not Required		Amount: As set forth in Article 15 of this Permit.

ISSUANCE of this Permit is subject to the terms, covenants, obligations, and reservations, expressed or implied herein and to the payment to the U.S. Dept. of the Interior, National Park Service of the sum of **$2,800.00** per year.

PERMITTEE:_____
Signature Organization Date

Authorizing Official:_____ George Turnbull
Signature Deputy Regional Director Date

Additional Authorizing Official:_____
(If Required) Signature Title Date

LIST OF EXHIBITS

EXHIBIT A: Map – Drake's Estero Oysters: Aquaculture Lease/SUP Area and NPS Resources

EXHIBIT B: Map – Drake's Estero Oysters – SUP & ROP

EXHIBIT C: Designated Retail Site

EXHIBIT D: Approved List of Complimentary Food Items

CONDITIONS OF THIS PERMIT

1) DEFINITIONS

As used in this Permit, the following terms shall have the following meanings:

a) "Agency" means any agency, department, commission, board, bureau, office or other governmental authority having jurisdiction.

b) "Applicable Laws" includes, without limitation all present and future statutes, regulations, requirements, Environmental Requirements, guidelines, judgments, or orders of any Agency or judicial body, whether now existing or hereafter established, relating to or affecting the Premises or the use or occupancy of the Premises.

c) "Commencement Date" is as defined on the Cover Page of this Permit.

d) "Cyclic Maintenance" means (i) the performance by Permittee of all repairs, maintenance, or replacement-in-kind necessary to maintain the Premises and the existing improvements thereon in good order, condition, and repair; (ii) housekeeping and routine and periodic work scheduled to mitigate wear and deterioration without materially altering the appearance of the Premises; (iii) the repair or replacement-in-kind of broken or worn-out elements, parts or surfaces so as to maintain the existing appearance of the Premises; and (iv) scheduled inspections of all building systems on the Premises.

e) "Default" means Permittee's failure to keep and perform any of the Provisions of this Permit.

f) "Environmental Requirements" means, without limitation, all standards or requirements relating to the protection of human health or the environment such as:

   a. standards or requirements pertaining to the reporting, permitting, management, monitoring, investigation or remediation of emissions, discharges, releases, or threatened emissions, releases or discharges of Hazardous Materials into the air, surface water, groundwater, or land;

   b. standards or requirements relating to the manufacture, handling, treatment, storage, disposal, or transport of Hazardous Materials; and

   c. standards or requirements pertaining to the health and safety of employees or the public.

g) "Expiration Date" is as defined on the Cover Page of this Permit.

h) "Hazardous Materials" means, without limitation, any material or substance, whether solid, liquid, or gaseous in nature,

   a. the presence of which requires reporting, permitting, management, monitoring, investigation or remediation under any Environmental Requirement;

   b. that is or becomes defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "pollutant," "discharge," "waste," "contaminant," or "toxic contaminant" under any Environmental Requirement, or any above-ground or underground storage containers for the foregoing;

   c. that is toxic, explosive, corrosive, flammable, infectious, radioactive, reactive, carcinogenic, mutagenic, or otherwise hazardous to human health or the environment and is or becomes regulated under any Environmental Requirement;

   d. that contains gasoline, diesel fuel or other petroleum hydrocarbons or derivatives or volatile organic compounds, or is an above-ground or underground storage container for same;

e. that contains polychlorinated biphenyls (PCBs), asbestos, asbestos-containing materials or urea formaldehyde foam insulation; or

f. that contains radon gas.

i) "Hazardous Materials Occurrence" means any use, generation, treatment, keeping, storage, transport, release, disposal, migration, or discharge of any Hazardous Materials from, on, under or into the Premises or Point Reyes National Seashore ("Point Reyes") that causes any environmental contamination.

j) "Improvements or Alterations" means any construction that does not fall within the definition of Cyclic Maintenance.

k) "NPS" means the management officials in charge of the administration and operation of Point Reyes, including the Superintendent or his/her designee(s).

l) "Park" means, without limitation, all lands, waters and structures within the legislative boundaries of the Point Reyes National Seashore, all natural and cultural resources within such boundaries, and any other property within such boundaries belonging to Point Reyes. As appropriate given the context, this term also includes the visiting public and/or Point Reyes employees.

m) "Permit" means this one year instrument which contains those certain termination and revocation provisions as provided for herein.

n) "Permitted Uses" is as defined on the Cover Page of this Permit.

o) "Personal Property" means all furniture, fixtures, equipment, appliances and apparatus placed on the Premises that neither are attached to nor form a part of the Premises. Personal Property also includes any trailers owned by Permittee.

p) "Point Reyes" means Point Reyes National Seashore.

q) "Premises" is as defined on the Cover Page of this Permit.

r) "Provision" shall mean any term, agreement, covenant, condition or provision of this Permit or any combination of the foregoing.

s) "ROP" or "Reservation of Use and Occupancy" means the Reservation of Use and Occupancy purchased by the Permittee in 2005. In 1972 the United States of America purchased Johnson Oyster Company's property, subject to a Reservation of Use and Occupancy on approximately 1.5 of those acres for a period of forty (40) years. This Reservation of Use and Occupancy expires in 2012.

t) "SUP" means this Permit.

u) "Term" is as defined on the Cover Page of this Permit.

v) "Termination Date" means the Expiration Date or such earlier date as this Permit is terminated or revoked pursuant to any Provision of this Permit.

2) <u>GENERAL CONDITIONS</u>

a) The Permittee shall exercise this privilege subject to the supervision of the Superintendent, and shall comply with all Applicable Laws.

b) Permit and Approvals – Except as otherwise provided in this Permit, Permittee shall be responsible for obtaining, at its sole cost and expense, all necessary permits, approvals or other authorizations relating to Permittee's use and occupancy of the Premises.

c) Damages - The Permittee shall pay the United States for any damage resulting from this use which would not reasonably be inherent in the use which the Permittee is authorized to make of the land and areas described In this Permit.

d) Benefit - Neither Members of, nor Delegates to Congress, or Resident Commissioners shall be admitted to any share or part of this Permit or derive, either directly or indirectly any pecuniary benefits to arise therefrom: Provided, however, that nothing herein contained shall be construed to extend to any incorporated company if the Permit be for the benefit of such corporation.

e) Assignment and Subletting - This Permit may not be transferred or assigned without the consent of the Permitter, in writing. Permittee shall not sublet the Premises or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with this Permit without the prior written approval of the Permitter.

f) Revocation - This Permit may be terminated upon breach of any of the conditions herein or at the discretion of the Permitter.

g) The Permittee is prohibited from giving false information; to do so will be considered a breach of conditions and be grounds for revocation [Re: 36 CFR 2.32(4)]

3) <u>USE OF PREMISES</u>

a) Permittee is authorized to use the Premises only for the Permitted Uses.

b) Permittee shall not engage in any activity that may be dangerous or harmful to persons, property, or the Park; that constitutes or results in waste or unreasonable annoyance (including, without limitation, signage and the use of loudspeakers or sound or light apparatus that could disturb park visitors and wildlife outside the Premises); that in any manner causes or results in a nuisance; or that is of a nature that it involves a substantial hazard, such as the manufacture or use of explosives, chemicals or products that may explode.

c) The Parties hereby acknowledge and agree that Permittee's covenant that the Premises shall be used as set forth in this Article 3 is material consideration for Permitter's agreement to enter into this Permit. The Parties further acknowledge and agree that any violation of said covenant shall constitute a Default under this Permit and that Permitter may inspect the premises at any time.

d) This Permit is subject to the right of the NPS to establish trails and other improvements and betterments over, upon, or through the Premises and further to the use by travelers and others of such established or existing roads and trails. The Permittee understands that occasional park visitors are authorized to walk, use non-motorized watercraft, or hike in the various areas included in this Permit even though no trails are formally established.

e) Permitter reserves the right for Permitter, its employees, contractors and agents to enter and to permit any Agency to enter upon the Premises for the purposes of inspection, inventory or when otherwise deemed appropriate by the Permitter for the protection of the interests of Permitter, including Permitter's interests in any natural or cultural resources located on, in or under the Premises.

f) Permitter reserves the right at any time to close to travel any of its lands, to erect and maintain gates at any point thereon, to regulate or prevent traffic of any kind thereon, to prescribe the methods of use thereof, and to maintain complete dominion over the same; provided, however, that at all times during the Term, Permitter shall provide Permittee and Permittee's invitees with reasonable access to the Premises subject only to interruptions caused by necessary maintenance or administrative operations or by matters beyond Permitter's control.

g) Permittee hereby waives any claim for damages for any injury, inconvenience to or interference with Permittee's use and occupancy of the Premises, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by Permitter's exercise of its rights under this Article 3 except to the extent that the damages, expenses, claims or suits result from the willful misconduct or gross negligence of Permitter, its employees,

contractors or agents; provided, further, that Permitter shall be liable only to the extent such claims are allowed under the Federal Tort Claims Act.

h) Permittee's operations are to be set back on the shore a minimum of 50 feet from the mean high tide mark, excepting a portion of that area which is the subject of this Permit and that is described in the attached map (Exhibit B).

i) While Permittee is permitted to use and operate motorized watercraft in Drakes Estero for the purpose of conducting daily business operations, no other use of Permittee's motorized watercraft is authorized. No motorized watercraft may enter the designated wilderness boundary (See "Existing Wilderness" on map attached hereto as Exhibit A). To protect water quality in the Estero, any additional or replacement boat motors obtained by Permittee must be four stroke motors.

j) Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites. The Marine Mammal Protection Act, 16 U.S.C. 1361 et seq., includes a prohibition against any act of pursuit, torment or annoyance that has the potential to injure or disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering. The National Oceanic and Atmospheric Administration (NOAA) recommends maintaining a distance of at least 100 yards to avoid disturbance to seals. Permitter will monitor marine mammal populations in Drakes Estero. In addition, during the pupping harbor seal closure period, March 1-June 30, the designated wilderness area (outside of Permit area) is closed to all boats. Permittee shall not place oyster and/or clam bags in seal haul-out areas as identified in Exhibit A. Any bags or cultivation equipment currently placed in haul-out areas shall be immediately removed.

k) In order to avoid introduction of exotic pests to Drakes Estero only oyster "seed" and not whole oysters may be imported. Seed must be obtained from regions approved by Permitter. At issuance of this Permit Washington, Oregon, and California are exclusively approved regions for obtaining oyster seed.

l) Due to a lack of adequate parking space and restroom facilities for the public, barbecuing is not permitted in the Special Use Permit Area; visitors may be directed to facilities located at Drakes Beach. Picnic tables will be provided by the NPS at the adjacent parking area.

m) No discharge into the estuary is permitted. This prohibition includes any discharge from processing facilities.

n) In order to ensure public health and safety, no pets, including dogs and cats, shall be permitted in the Special Use Permit Area.

o) In order to ensure public health and safety, Permittee shall allow all appropriate Federal, State and/ or County agencies; including the United States Department of Health and Human Services, the State of California Department of Health Services and Marin County Community Development Agency Environmental Health Services, to conduct inspections on a routine basis.

p) Permittee shall retail only those items that are approved by the superintendent in writing. Exhibit D sets forth the approved list of retail items. The designated retail site as set forth in Exhibit C is the sole building that can be used for retail items.

4) <u>SPECIAL PERMIT CONDITIONS</u>

a) The maximum annual production limit for oysters, rock scallops and clams shall be 700,000 pounds. Oysters are limited in number to 9,000,000 and clams to 1,000,000.

b) No additional oyster racks and/or cultivation infrastructure shall be constructed during the term of this permit. Permittee shall remove abandoned oyster racks and/or cultivation infrastructure and equipment from Drakes Estero.

c) Placement of bags for oyster and/or clam production is prohibited in eelgrass areas. Any bags currently placed in

eelgrass areas shall be removed immediately.

d) Within sixty (60) days following the signing of this interim Permit, Permittee shall submit for National Park Service and California Coastal Commission approval a boating operations plan designed to mitigate impacts to eelgrass beds within Drakes Estero. This plan shall indicate dedicated navigation routes, chosen to minimize impacts to eelgrass beds when accessing oyster racks and/or cultivation equipment.

e) In order to control invasive species, Permittee shall make every effort to ensure that no new species enter the estuary. Within sixty (60) days following the signing of this interim Permit, Permittee shall submit for National Park Service and California Coastal Commission approval a concise invasive species mitigation plan that includes best management practices (BMP's).

f) Permittee shall not introduce species of oysters and/or clams beyond those described in the existing leases from the California Department of Fish and Game.

g) This Permit is subject to the good faith participation of the Permittee in the environmental compliance process regarding the issuance of a Special Use Permit for the remainder of the term of the ROP. Such good faith participation shall include complying with the requirements set forth in Section 20(b) of this Permit.

5) ACCEPTANCE OF PREMISES

a) Prior to entering into this Permit, Permittee has made a thorough, independent examination of the Premises and all matters relevant to Permittee's decision to enter into this Permit, and Permittee is thoroughly familiar with all aspects of the Premises and is satisfied that they are in an acceptable condition and meet Permittee's needs.

b) Permittee expressly agrees to use and occupy the Premises and all improvements thereon in their existing "AS IS" condition "WITH ALL FAULTS" and acknowledges that in entering into this Permit, Permittee does not rely on, and Permitter does not make, any express or implied representations or warranties as to any matters including, without limitation, the suitability of the soil or subsoil; any characteristics of the Premises or improvements thereon; the suitability of the Premises for the approved use; the economic feasibility of Permittee's use and occupancy of the Premises; title to the Premises; the presence of Hazardous Materials in, on, under or in the vicinity of the Premises; or any other matter. Permittee has satisfied itself as to such suitability and other pertinent matters by Permittee's own inquiries and tests into all matters relevant to determining whether to enter into this Permit and Permittee hereby accepts the Premises.

6) CONSTRUCTION OF IMPROVEMENTS OR ALTERATIONS

a) Permittee shall not undertake any Improvements or Alterations to the Premises (including installation of temporary equipment or facilities) without the prior written approval of Permitter.

b) As a prerequisite to obtaining approval for Improvements or Alterations, Permittee, at Permittee's sole cost and expense, shall submit design plans and any other relevant data for Permitter's approval.

c) Construction of Improvements or Alterations by Permittee shall be performed in accordance with all Applicable Laws, including but not limited to general planning, building, and environmental laws and approved design plans and shall be undertaken and completed at Permittee's sole cost and expense.

d) Permittee shall, upon request, furnish Permitter with a true and correct copy of any contract, and any modification or amendment thereof, with Permittee's contractors, architects, or any other consultants, engaged in connection with this Permit.

e) Any Improvements or Alterations undertaken by Permittee shall be performed in a good and workmanlike manner and with materials of a quality and standard acceptable to Permitter. Permittee shall also construct, install and maintain equipment and any construction facilities on the Premises in a safe and orderly manner.

f) Permittee shall not construct any Improvements or Alterations outside the boundaries of the Premises.

g) Permitter in its discretion is entitled to have on the Premises at any time during the construction of Improvements or Alterations an inspector or representative who shall be entitled to observe all aspects of the construction on the Premises.

h) All lumber utilized at the site will be processed in compliance with current laws and regulations regarding wood treatments. This includes lumber utilized in assembly and repair of oyster racks.

i) As set forth in Article 17, title to any Improvements or Alterations to the Premises shall be and remain solely in the Permitter.

7) TREATMENT OF REFUSE

a) Refuse shall be promptly removed from within the boundaries of Point Reyes National Seashore and shall be disposed of in accordance with Applicable Laws.

b) Areas in Drakes Estero must be kept free of debris associated with oyster production operations including wood from racks, plastic spacers, unused oyster bags, and any other associated items.

8) PESTICIDE AND HERBICIDE USE

a) The National Park Service utilizes Integrated Pest Management ("IPM") to treat pest and vegetation problems. The goal of IPM is to use the least-toxic, effective methods of controlling pests and vegetation. Except for normal household purposes, Permittee shall not use any pesticides that do not comply with the IPM program. To this end, Permittee shall submit in writing to Permitter, a request for the use of pesticide(s) or herbicide(s) and shall not use any pesticide(s) or herbicide(s) until Permittee has received an express written authorization therefor from Permitter.

b) Permittee shall manage, treat, generate, handle, store and dispose of all pesticides and herbicides in accordance with Applicable Laws, including reporting requirements.

9) FIRE PREVENTION AND SUPPRESION

a) Permittee and its employees, agents, and contractors shall, in Permittee's use and occupancy of the Premises, take all reasonable precautions to prevent forest, brush, grass, and structural fires and shall, if safety permits, assist the Permitter in extinguishing such fires on the Premises.

10) EXCAVATION, SITE AND GROUND DISTURBANCE

a) Permittee shall not cut, remove or alter any timber or any other landscape feature; conduct any mining or drilling operations; remove any sand, gravel or similar substances from the ground or watercourse; commit waste of any kind; or in any manner change the contour or condition of the Premises without the prior written approval of the Permitter. Except in emergencies, Permittee shall submit requests to conduct such activities in writing to the Permitter not less than sixty (60) days in advance of the proposed commencement date of any such activities.

b) If approval of activities referenced above in Section10(a) is granted, Permittee shall abide by all the terms and conditions of the approval, including provisions pertaining to archaeological resources.

c) No soil disturbance of any kind may occur in the vicinity of a known archeological site.

11) NONPOINT SOURCE POLLUTION

a) The Permittee shall comply with all Applicable Laws regarding non-point source pollution (including the protection of beneficial uses of waters as designated by the State of California). Further, Permittee's use and occupancy of the Premises shall be designed to minimize, to the greatest extent feasible, non-point source pollution within National Park Service boundaries or on adjacent lands.

b) As set forth in Section 3(m) of this Permit, no discharge into the estuary is permitted. This prohibition includes any discharge from processing facilities.

12) TREE AND VEGETATION REMOVAL

a) The Permittee may not remove tree(s) or vegetation unless expressly approved in writing by the Permitter. The Permittee shall provide specific plans to the Permitter for desired tree(s) and vegetation removal during the annual meeting or in writing during the Term of this Permit.

b) Removal of non-native invasive vegetation such as non-native thistles, trimming and vegetation removal around structures is permissible.

13) WILDLIFE PROTECTION

a) Wildlife is an integral part of Point Reyes National Seashore and must be managed in accordance with all Applicable Laws, including but not limited to NPS legislation, the Code of Federal Regulations, and NPS policies, including but not limited to NPS Management Policies 2006, as such may be amended.

b) Permittee shall not engage in any activity that purposely causes harm or destroys any wildlife. Conversely, Permittee shall not engage in any activity that purposely supports or increases populations of non-native or invasive animal species.

c) As set forth in Section 3(j) of this Permit, Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites.

d) On a case by case basis, the Permitter will evaluate incidences of depredation and choose a course of action. The nature of the course of action will be determined by the extent and frequency of the damage, the wildlife species, and park-wide management objectives.

14) HAZARDOUS MATERIALS; ENVIRONMENTAL HEALTH AND SAFETY

a) In connection with this Permit, Permittee, its officers, agents, employees and contractors, shall not use, generate, sell, treat, keep, or store any Hazardous Materials on, about, under or into the Premises or elsewhere in Point Reyes except in compliance with all Applicable Laws and as approved in writing by Permitter. However, Permittee shall not be obligated to obtain Permitter's approval to use, keep, or generate Hazardous Materials as necessary for the normal operation or maintenance of vehicles. Permittee agrees to be responsible for timely acquisition of any permit(s) required for its Hazardous Materials-related activities, and shall provide to the Permitter, upon request, inventories of all such Hazardous Materials and any supporting documentation, including but not limited to material safety data sheets, uniform waste manifest forms, and/or any other pertinent permits.

b) Permittee, its officers, agents, employees and contractors, shall not release, discharge or dispose of any Hazardous Materials from, on, about, under or into the Premises or elsewhere in Point Reyes.

c) If Permittee knows of or reasonably suspects or receives notice or other communication concerning any past, ongoing, or potential violation of Environmental Requirements in connection with the Premises or Permittee's activities, Permittee shall immediately inform Permitter and shall provide copies of any relevant documents to Permitter. Receipt of such information and documentation shall not be deemed to create any obligation on the part of the Permitter to defend or otherwise respond to any such notification.

d) If any Hazardous Materials Occurrence is caused by, arises from, or is exacerbated by the activities authorized under this Permit or by the use of the Premises by Permittee, its officers, agents, employees or contractors, Permittee shall promptly take all actions at its sole cost and expense as are required to comply with Applicable Laws and to allow the Premises and any other affected property to be used free of any use restriction that could be imposed under Applicable Laws; provided that, except in cases of emergency, Permitter's approval of such actions shall first be obtained.

e) The Permitter shall have the right, but not the duty, at all reasonable times and, except in the case of emergency, following at least twenty-four (24) hours advance notice to Permittee, to enter and to permit any Agency, public or private utilities and other entities and persons to enter upon the Premises, as may be necessary as determined by the Permitter in its sole discretion, to conduct inspections of the Premises, including invasive tests, to determine whether Permittee is complying with all Applicable Laws and to investigate the existence of any Hazardous Materials in, on or under the Premises. The Permitter shall have the right, but not the duty, to retain independent professional consultants to enter the Premises to conduct such inspections and to review any report prepared by or for Permittee concerning such compliance. Upon Permittee's request, the Permitter will make available to Permittee copies of all final reports and written data obtained by the Permitter from such tests and investigations. Permittee shall have no claim for any injury or inconvenience to or interference with Permittee's use of the Premises or any other loss occasioned by inspections under this Section 14(e).

f) Should Permittee, its officers, agents, employees or contractors, fail to perform or observe any of the obligations or agreements pertaining to Hazardous Materials or Environmental Requirements for a period of thirty (30) days (or such longer period of time as is reasonably required) after notice, then Permitter shall have the right, but not the duty, without limitation of any other rights of Permitter under this Permit, personally or through its agents, consultants or contractors to enter the Premises and perform the same. Permittee agrees to reimburse Permitter for the costs thereof and to indemnify Permitter as provided for in this Permit.

g) Permittee understands and acknowledges that the Premises may contain asbestos and lead-based paint. If Permittee performs any Improvements or Alterations, Permittee shall comply with all Environmental Requirements related to asbestos and lead-based paint and shall solely bear all costs associated therewith. Nothing in this Permit shall be construed to require Permittee to remove asbestos or lead-based paint unless Environmental Requirements require such removal.

h) Permittee shall indemnify, defend, save and hold Permitter, its employees, successors, agents and assigns, harmless from and against, and reimburse Permitter for, any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments, and expenses, including without limitation, consultant fees and expert fees, that arise during or after the Term as a result of any violation of any Environmental Requirement in connection with this Permit or any Hazardous Materials Occurrence in connection with this Permit.

i) The provisions of this Article 14 shall survive any termination or revocation of this Permit. Article 15 (Insurance) of this Permit shall not limit in any way Permittee's or Permitter's obligations under this Article 14.

15) <u>INSURANCE</u>

a) Permittee shall purchase the types and amounts of insurance described herein before the Commencement Date of this Permit unless otherwise specified. At the time such insurance coverage is purchased, Permittee shall provide Permitter with a statement of Permittee insurance describing the insurance coverage in effect and a Certificate of Insurance covering each policy in effect as evidence of compliance with this Permit. Permittee shall also provide the Permitter thirty (30) days advance written notice of any material change in the Permittee's insurance program hereunder. Permitter shall not be responsible for any omissions or inadequacies in insurance coverage or amounts in the event such coverage or amounts prove to be inadequate or otherwise insufficient for any reason whatsoever.

b) From time to time, as conditions in the insurance industry warrant, the Permitter reserves the right to revise the minimum insurance limits required in this Permit.

c) All insurance policies required by this Permit shall specify that the insurance company shall have no right of subrogation against the United States, except for claims arising solely from the negligence of the United States or its employees, or shall provide that the United States is named as an additional insured.

d) All insurance policies required herein shall contain a loss payable clause approved by the Permitter which requires insurance proceeds to be paid directly to the Permittee without requiring endorsement by the United

States. Insurance proceeds covering any loss of the Premises but not used to replace such losses shall be promptly paid by Permittee to Permitter. The use of insurance proceeds for the repair, restoration or replacement of the Premises shall not give any ownership interest therein to Permittee.

e) Property Insurance: At a minimum, the Permittee shall be required to purchase Basic Form Actual Cash Value (replacement cost less depreciation) insurance coverage for all residence on the Premises. Within thirty days of issuance of the Permit, the Permittee shall submit a report from a reputable insurance company which provides a full range of options for insurance coverage on all nonresidential structures on the Premises. Within thirty days of receipt of this report, the Permitter, in its sole discretion, will review and specify the type and level of insurance coverage which shall be required. The Permitter will provide the Permittee written notification of insurance requirements and the Permittee shall be required to have the specified level(s) of insurance in place within thirty days of such notification. The cost of the insurance will be deducted from the appraised fair market value for the Premises; this adjustment and the insurance requirements will be addressed in an amendment to the Permit. Permittee shall, in the event of damage or destruction in whole or in part to the Premises, use all proceeds from the above described insurance policies to repair, restore, replace or remove those buildings, structures, equipment, furnishings, betterments or improvements determined by the Permitter, in Permitter's sole discretion, to be necessary to satisfactorily discharge the Permittee's obligations under this Permit.

f) Public Liability: The Permittee shall provide Comprehensive General Liability insurance against claims arising from or associated with Permittee's use and occupancy of the Premises. Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such use and occupancy, but in any event, the limits of such insurance shall not be less than $1,000,000.00 per occurrence covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, the Permittee shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a Comprehensive General Liability Policy, may be used to achieve the required limits.

g) Permittee shall also obtain the following additional coverage:

   i) Automobile Liability – To cover all owned, non-owned, and hired vehicles in the amount of $300,000.00.

   ii) Workers' Compensation – The amount shall be in accordance with that which is required by the State of California.

16) <u>INDEMNITY</u>

a) In addition to the indemnification contained in Article 14, Permittee shall indemnify, defend, save and hold Permitter, its employees, successors, agents and assigns, harmless from and against, and reimburse Permitter for, any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments and expenses and the like incurred in connection with or arising in any way out of this Permit; the use or occupancy of the Premises by Permittee or its officers, agents, employees, or contractors; the design, construction, maintenance, or condition of any Improvements or Alterations; or any accident or occurrence on the Premises or elsewhere arising out of the use or occupancy of the Premises by Permittee or its officers, agents, employees, or contractors. Permittee's obligations hereunder shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably approved by Permitter), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against the United States.

b) Permitter agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States by third parties for personal injuries or property damage resulting from the negligent act or omission of any employee of the United States in the course of his or her employment.

c) This Article 16 shall survive any termination or revocation of this Permit. The provisions of Article 15 (Insurance) of this Permit shall not limit in any way Permittee's obligations under this Article 16.

17) PROPERTY INTEREST

a) This Permit shall vest in Permittee no property interest in the Premises or in the improvements thereon. Title to real property and improvements thereon, including any Improvements or Alterations constructed by Permittee, shall be and remain solely in Permitter. Permittee shall have no claim for any compensation or damages for the Premises, the improvements thereon, or any Improvements or Alterations constructed by the Permittee.

b) Nothing in this Permit shall give or be deemed to give Permittee an independent right to grant easements or other rights-of-way over, under, on, or through the Premises.

c) Permitter hereby retains the sole and exclusive right to oil, gas, hydrocarbons, and other minerals (of whatsoever character) in, on, or under the Premises.

18) RENTS, TAXES AND ASSESSMENTS

a) The annual rental rate for this Permit shall be established by Permitter and is set forth on the Cover Page of this Permit.

b) The annual rent under this Permit is payable in advance on a semi-annual basis. Therefore, Permittee hereby agrees to pay fifty percent of the annual rate on or before August with the remaining fifty percent payable on or before December of each year during the Term.

c) Permittee shall pay the proper Agency, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time during the Term of this Permit, are levied or assessed against the Premises.

d) Rents due hereunder shall be paid without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment or reduction.

19) CYCLIC MAINTENANCE

a) Permittee shall perform all Cyclic Maintenance in accordance with the Provisions of this Permit and at Permittee's sole cost and expense. Permittee is responsible for the maintenance of all fences, buildings, and other improvements upon the Premises. All improvements and facilities used and occupied by Permittee shall at all times be protected and maintained in a safe, sanitary and sightly condition.

b) Specific maintenance requirements may be negotiated with Permittee each year as outlined in Article 21 (Annual Meeting).

c) Docks and Fences must be in good repair. Abandoned fences and other decrepit improvements shall be removed from the Premises and shall be disposed of outside the Park or as directed by Permitter after review and approval by the NPS Historian.

d) Lighting of the Premises shall be redesigned to protect and preserve the night sky/darkness and minimize light pollution in Drakes Estero.

e) Parking areas shall be maintained in a safe condition and no new roads or truck trails shall be established without prior written permission of the Permitter. The main entrance road will be maintained by the NPS.

f) Existing water reservoirs shall be maintained in a safe and secure condition to prevent washouts and erosion and no new reservoirs shall be constructed or established without prior written approval of the Permitter.

g) Permittee shall maintain the water, well, pump and all pipelines from the main line to the structures within the Premises. Permittee shall replace or repair any damage or loss of the water system within the Premises.

h) Permittee shall be responsible for removing slash buildup around fences or other facilities within the Premises so

as to prevent fire and egress hazards. Permittee shall also be responsible for removing litter and trash from the Premises.

20) COMPLIANCE WITH APPLICABLE LAWS; NEPA, NHPA

a) General Compliance: As provided for in this Permit, Permittee at its sole cost and expense shall promptly comply with all Applicable Laws. Permittee shall immediately notify Permitter of any notices received by or on behalf of Permittee regarding any alleged or actual violation(s) of or non-compliance with Applicable Laws. Permittee shall, at its sole cost and expense, promptly remediate or correct any violation(s) of Applicable Laws.

b) National Environmental Policy Act and National Historic Preservation Act: Where activities undertaken by Permittee require the preparation of compliance documents pursuant to the National Environmental Policy Act ("NEPA") or the National Historic Preservation Act ("NHPA") ("Compliance Activity"), Permittee shall supply all necessary information to Permitter and any Agency in a timely manner. If Permitter determines that the Compliance Activity is warranted, Permitter will prepare NEPA or NHPA documents as appropriate. Permittee shall not implement any aspect of the Compliance Activity until all applicable NEPA and NHPA requirements have been met.

21) ANNUAL MEETING

a) The Parties shall meet annually in the spring of each year during the Term of this Permit for the purposes of discussing and resolving issues of mutual concern and ensuring that Permittee is complying with the Provisions of this Permit. Any proposed changes or modifications to this Permit which are required in order to meet National Park Service requirements or objectives shall be discussed and negotiated at the Annual Meeting. If National Park Service requirements or objectives require prompt attention, the date of the Annual Meeting may reasonably be changed by Permitter.

22) PENALTY

a) At the option of the Permitter, Permitter may, in lieu of voiding and terminating this Permit, assess a penalty of $50.00 per day for any failure by Permittee to keep and perform any of the Provisions of this Permit. In such case, Permittee shall be given notice in writing of a grace period (of from one to thirty days) to remedy the situation before a penalty will be assessed. Payment of any penalty under this provision shall not excuse Permittee from curing the Default. This provision shall not be construed as preventing Permitter from issuing citations or initiating enforcement proceedings under Applicable Laws.

23) TERM

a) Six months prior to the Expiration Date of this Permit, this Permit, or a similar permit, may be offered to Permittee for an additional period.

b) If a subsequent permit is not entered into prior to the Expiration Date, the Provisions of this Permit regarding Permittee's obligations to surrender and vacate the Premises shall apply.

c) The Permittee and Permitter acknowledge and recognize that the Reservation of Use and Occupancy referenced in the deed from Johnson Oyster Company to the United States of America, recorded on November 30, 1972, in book 2634, page 641 of the Official Records of Marin County, California, expires on November 9, 2012. The Permittee acknowledges that they have been informed about the Congressional designation in 1976 of Drakes Estero as potential wilderness and the statutory mandate that the Park be managed "in a manner . . . supportive of the maximum protection, restoration, and preservation of the natural environment within the area." The Permittee also acknowledges that they have been provided the Office of the Solicitor legal opinion dated February 26, 2004 regarding the future of the potential wilderness area.

24) SURRENDER AND VACATE THE PREMISES, RESTORATION

A) On the Termination Date of this Permit, Permittee shall surrender and vacate the Premises, remove Permittee's

Personal Property therefrom, and repair any damage resulting from such removal. Subject to the approval of the Permitter, Permittee shall also return the Premises to as good order and condition (subject to ordinary wear and tear and damage that is not caused directly or indirectly by Permittee) as that existing upon the Effective Date.

b) All Permittee's Personal Property shall remain the property of Permittee. However, if after the Termination Date, Permittee shall fail satisfactorily to remove Permittee's Personal Property and so repair the Premises, then, at the Permitter's sole option, after notice to Permittee, Permittee's Personal Property, shall either become the property of the Permitter without compensation therefore, or the Permitter may cause it to be removed and the Premises to be repaired at the expense of Permittee, and no claim for damages against Permitter, its employees, agents or contractors shall be created or made on account of such removal or repair work.

25) LIMITATION ON EFFECT OF APPROVALS

a) All rights of Permitter to review, comment upon, approve, inspect or take any other action with respect to the use and occupancy of the Premises by Permittee, or any other matter, are expressly for the benefit of Permitter and no other party. No review, comment, approval or inspection, right or exercise of any right to perform Permitter's obligations, or similar action required or permitted by, of, or to Permitter under this Permit, or actions or omissions of Permitter's employees, contractors, or other agents, or other circumstances shall give or be deemed to give Permitter any liability, responsibility or obligation for, in connection with, or with respect to the operation of the Premises, nor shall any such approval, actions, information or circumstances relieve or be deemed to relieve Permittee of its obligations and responsibilities for the use and occupancy of the Premises as set forth in this Permit.

26) WAIVER NOT CONTINUING

a) The waiver of any Default, whether such waiver be expressed or implied, shall not be construed as a continuing waiver, or a wavier of or consent to any subsequent or prior breach of the same or any other provision of this Permit. No waiver of any Default shall affect or alter this Permit, but each and every Provision of this Permit shall continue in full force and effect with respect to any other then existing or subsequent Default.

27) LIENS

a) Permittee shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion, fee interest or other estate of the Permitter or of any interest of the Permitter in the Premises. If any such lien shall at anytime be filed against the Premises or any portion thereof, Permittee shall cause the Permitter to be discharged from the lien.

28) HOLDING OVER

a) This Permit shall terminate upon the Termination Date and any holding over by Permittee after the Termination Date shall not constitute a renewal of this Permit or give Permittee any rights under this Permit or in or to the Premises.

29) NOTICES

a) Any notice or other communication required or permitted under this Permit shall be in writing and shall be delivered by hand or certified mail with return receipt requested. Notices and other communications shall be addressed as follows:

If to Permitter:

Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

If to Permittee:

Mr. Kevin Lunny
Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

30) NO PARTNERSHIP OR JOINT VENTURE

a) Permitter is not for any purpose a partner or joint venturer of Permittee in the development or operation of the Premises or in any business conducted on the Premises. Permitter shall not under any circumstances be responsible or obligated for any losses or liabilities of Permittee.

31) ANTI-DEFICIENCY ACT

a) Permittee and Permitter agree that nothing contained in this Permit shall be construed as binding Permitter to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the subject matter of this Permit, or to involve Permitter in any contract or other obligation for the future expenditure of money in excess of such appropriations.

32) COMPLIANCE WITH EQUAL OPPORTUNITY LAWS

a) Permittee agrees that in undertaking all activities pursuant to this Permit, Permittee will comply with all Applicable Laws relating to non-discrimination.

33) ENTIRE AGREEMENT AND AMENDMENT

a) This instrument, together with the exhibits hereto, all of which are incorporated in this Permit by reference, constitutes the entire agreement between Permitter and Permittee with respect to the subject matter of this Permit and supersedes all prior offers, negotiations, oral and written. This Permit may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Permitter and Permittee.

34) NO PAYMENTS BY PERMITTER

a) Under no circumstances or conditions, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall Permitter be expected or required to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability except as expressly set forth in this Permit.

35) NO THIRD PARTY BENEFICIARIES

a) Except as expressly set forth in this Permit, this Permit shall not be deemed to confer upon any person or entity, other than the parties to this Permit as expressly set forth in this Permit, any third party beneficiary status, any right to enforce any Provision of this Permit, or any other right or interest.

36) NO PREFERENTIAL RENEWAL AND RELOCATION ASSISTANCE

a) Permittee hereby agrees that Permittee is not a concessioner and that the provisions of law regarding National Park Service concessionaires do not apply to Permittee. No rights shall be acquired by virtue of this Permit entitling Permittee to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

37) SEVERABILITY

a) In case any one or more of the provisions of this Permit shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Permit, and this Permit shall be construed as if such invalid, illegal or unenforceable provisions had not been

contained in this Permit.

38) EXHIBITS

a) Each of the exhibits referenced in this Permit is attached hereto and incorporated herein.

39) TIME OF THE ESSENCE

a) Time is hereby expressly declared to be of the essence of this Permit and of each and every Provision of this Permit.

40) HEADINGS

a) Article, Section and Subsection headings in this Permit are for convenience only and are not to be construed as a part of this Permit or in any way limiting or amplifying the Provisions of this Permit.

41) PERMIT CONSTRUED AS A WHOLE

a) The language in all parts of this Permit shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Permitter or Permittee. The Parties acknowledge that each party and its counsel have reviewed this Permit and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed or applied in the interpretation of this Permit.

42) MEANING OF TERMS

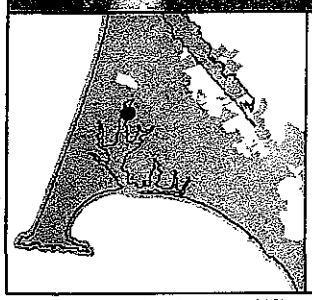
a) Whenever the context so requires, the neuter gender shall include the masculine and the feminine, and the singular shall include the plural and vice versa.

43) FEDERAL LAW

a) The laws of the United States shall govern the validity, construction and effect of this Permit.

EXHIBIT A
MAP

Drake's Estero Oysters - SUP & ROP



National Park Service
Point Reyes National Seashore
Marin County, CA

N
W E
S

0 50 100 150 200
Feet

Permit Type

ROP - 1.5 acres

SUP - 1.1 acres

Plot date: July 2007 S:\GIS\projects1\neubad\johnsons\johnsons_lease_7-12-2007

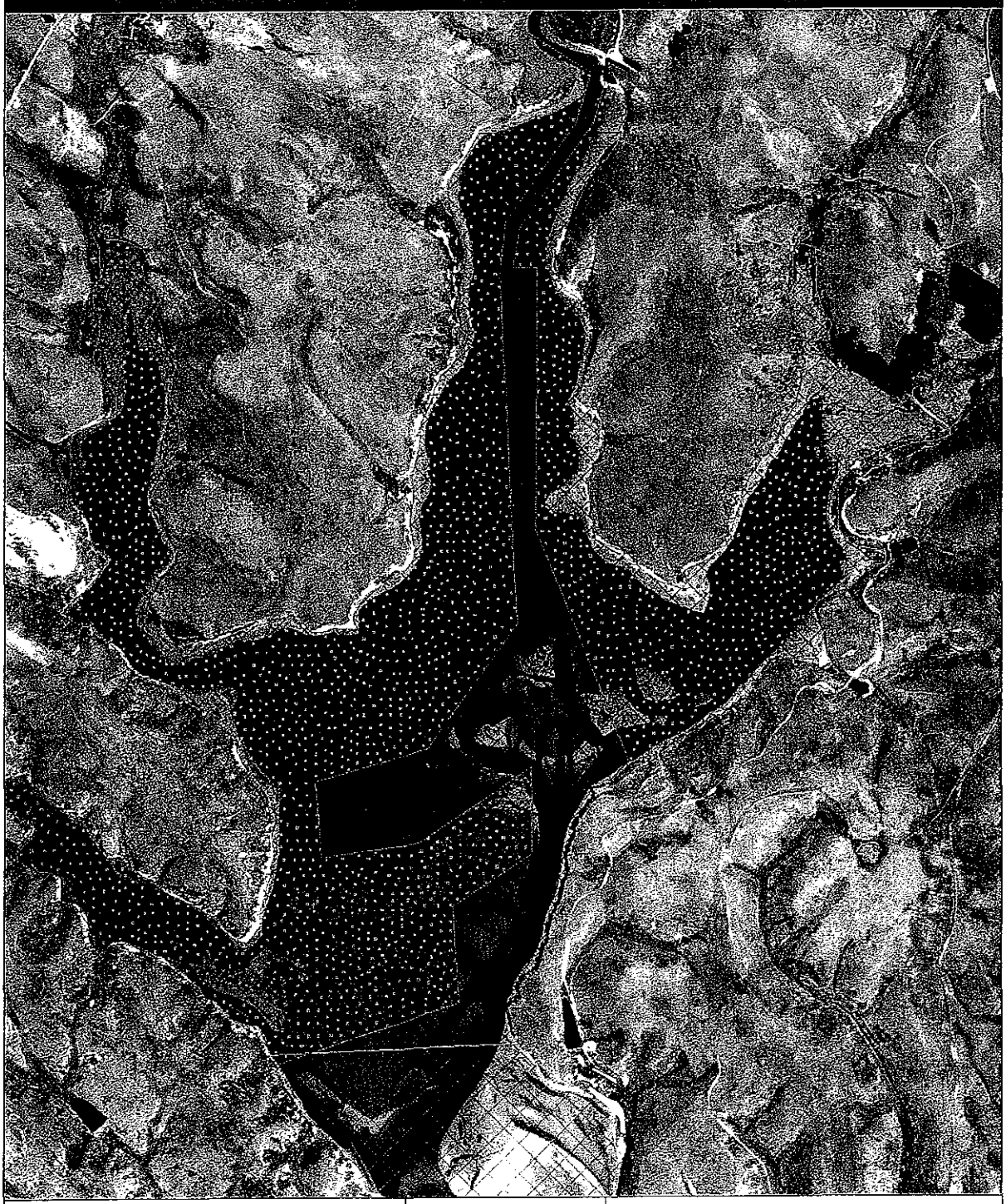
EXHIBIT B

MAP

Drake's Estero Oysters

National Park Service
U.S. Department of the Interior

Aquaculture Lease/SUP Area and NPS Resources



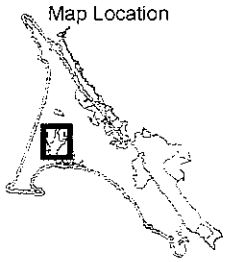
Astragalus Pycnostachys

- Aquaculture Lease/SUP Area
- Harbor Seal Haulout Area
- Potential Wilderness - Water
- Existing Wilderness - Water

Permit Type

- ROP
- SUP

Map Location



N
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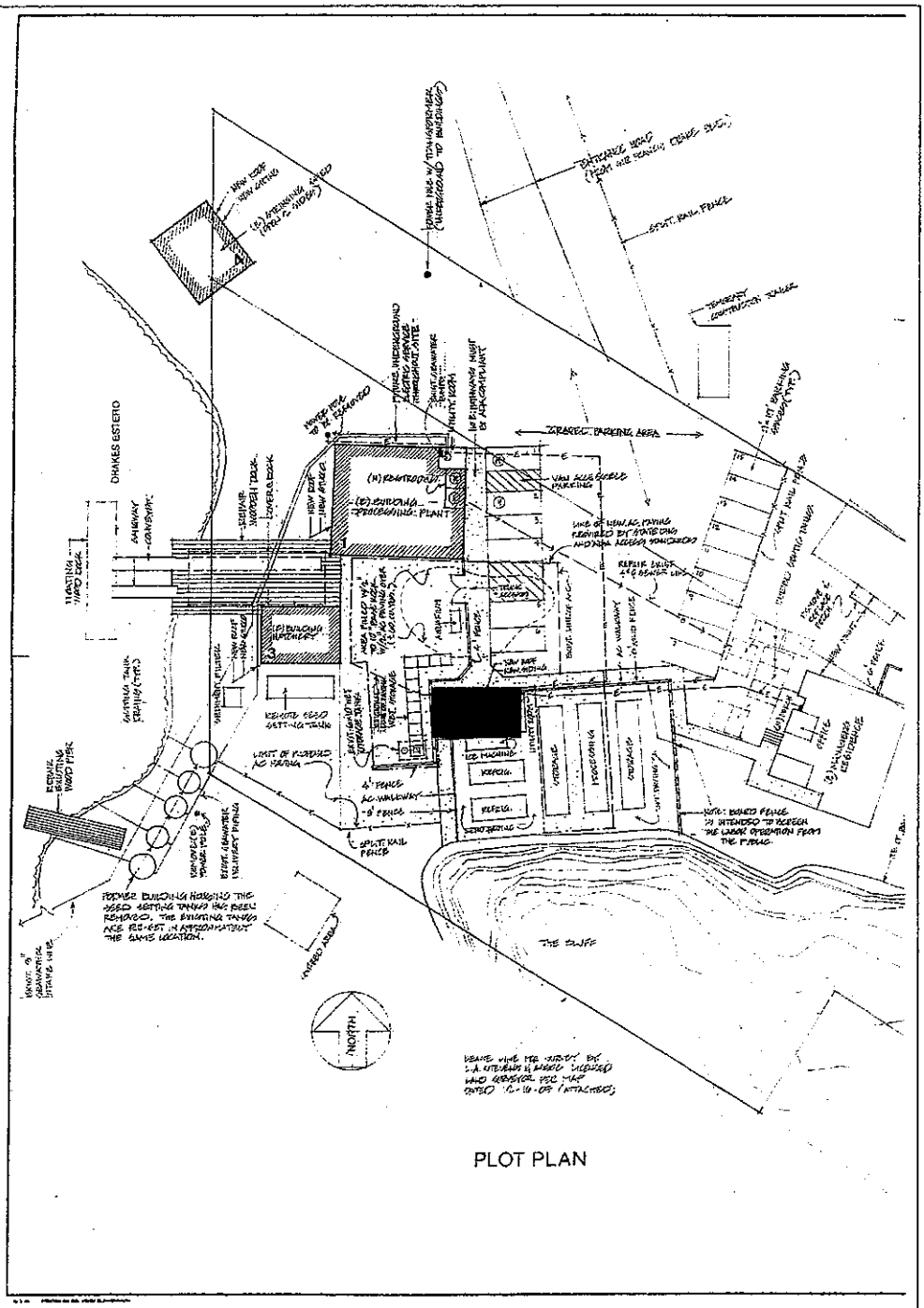
0 0.5 Miles

1:25,551 1 inch equals 0.4 miles

Plot date: Febuary 1, 2007 s:/gis/projects1/Neubacher/Johnsons/Drakes Estero Oyester Lease & Drakes Estero4.mxd

EXHIBIT C
Designated Retail Site

EXHIBIT C
Designated Retail Site



PLOT PLAN

EXHIBIT D

Approved List of Complimentary Food Items

- Limes
- Sauces
- Sodas – Permittee may retail no more than four varieties of sodas.
- Water
- Ranch food products grown and or processed on adjacent ranches.

The non-food items that the DBOC would like to continue to retail:

- Oyster knives
- Crab shell crackers
- Insulated containers
- Gloves
- Aprons

Drake's Bay Oyster Company's Reservation of Use and Occupancy
Updated, NPS
July 26, 2007

Chronology of Legally Significant Events

1934: According to State, earliest state water bottom leases at Drakes Estero

1962: Enactment of Point Reyes National Seashore enabling act (codified at 16 U.S.C. § 459c – 459c-7), to include Drakes Estero.

1965: By act of the California Legislature, State grants to the United States "all of the right, title, and interest of the State of California...in and to all of the tide and submerged lands or other lands beneath navigable waters situated within the boundaries of Point Reyes National Seashore...." **Thus, the tidal and submerged lands of Drakes Estero become NPS land, subject to the laws, regulations, and policies governing NPS land.**

- Because of this conveyance to the United States, the California Department of Fish and Game (CDF&G) recognizes that the Drakes Bay Oyster Company mariculture operation in the estuary "is properly within the primary management authority of [Point Reyes National Seashore], not the Department." CDF&G Letter to Supt. Neubacher, dated May 15, 2007. The CDF&G water bottom lease is also expressly contingent on the 1972 Reservation of Use and Occupancy (described below) and subject to all NPS rules and regulations. *Id.*

1972: United States purchases Johnson Oyster Company's property ("five acres, more or less" onshore) for $79,200, subject to a **Reservation of Use and Occupancy** on approximately 1.42 of those acres for a period of forty (40) years—till 2012.

- Thus, the Reservation of Use and Occupancy is not a lease. Rather, it is "a terminable right to use and occupy" the 1.42 acres for a period of 40 years for specified purposes. *See* Reservation of Use and Occupancy, Exhibit "C" to the 1972 Grant Deed (copy attached). The United States owns the underlying fee, having purchased the property for a price that reflects the value of the 40-year reservation.
- The Reservation of Use and Occupancy has 18 paragraphs of terms and conditions, including but not limited to requirements that (a) the Oyster Company "abide by all rules and regulations pertaining to National Park System areas"; (b) "[t]he premises...be maintained in a safe, sanitary, and sightly condition... meeting all Federal, State, and County health, sanitation, and safety standards..."; (c) "[n]o permanent or temporary structure, sign or other improvement of any type whatsoever...be erected...in or upon the reserved premises or improvements without the prior written approval of the Director."
- The Reservation of Use and Occupancy expires in 2012.

1976: Enactment of additional Point Reyes National Seashore legislation to designate wilderness and strengthen the enabling act (Pub. L. No. 94-544 (Oct. 18, 1976):

- **Wilderness:** Designates as wilderness, to be administered by the Secretary of the Interior in accordance with the Wilderness Act, 25,370 acres and potential wilderness additions (including Drakes Estero) comprising 8,003 acres.[1]

  The House Committee Report (H. Rep. No. 94-1680)[2] states the following about potential wilderness additions: "As is well established, it is the intention that those lands and waters designated as potential wilderness additions *will be essentially managed as wilderness, to the extent possible, with efforts to steadily continue to remove all obstacles to the eventual conversion of these lands and waters to wilderness status.*" (Emphasis added.) Case law has made clear that commercial operations and structures and installations are not compatible with wilderness.

- **Prioritization of natural values:** The Secretary shall administer the Seashore "*without impairment of its natural values*, in a manner which provides for such recreational, educational, historic preservation, interpretation, and scientific research opportunities as are consistent with, based upon, and supportive of the *maximum protection, restoration, and preservation of the natural environment within the area.*" (Emphasis added.)

  The House Committee Report states that this language "underscores the intention that *the Seashore is to be managed for the protection of its natural environment and values.*" (Emphasis added.) The Report makes clear that the Seashore should be managed under the then existing NPS policies governing "natural" areas rather than the policies for "recreational" areas. These policies emphasize, among other things, the preservation of the total environment of natural areas, the removal of all inconsistent physical improvements or land uses on acquired property, and the elimination "as rapidly as possible" of nonpark uses and developments. *SeeAdministrative Policies (Natural Area Category),* revised 1970, at 16, 28, 62.

1985: Congress names the wilderness area in Point Reyes National Seashore the **"Phillip Burton Wilderness"** to recognize Congressman Burton's "dedication to the protection of the Nation's outstanding natural, scenic, and cultural resources and his leadership in establishing units of the National Park System and preserving their integrity against threats to those resources..." Pub. L. No. 99-68 (July 19, 1985).

1997 to present: Issues of authorization and compliance by Johnson Oyster Company and, since 2005, Drakes Bay Oyster Company with respect to County and State laws:

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[1] "Potential wilderness additons" are lands that do not qualify for immediate designation as wilderness "due to temporary nonconforming or incompatible conditions. *See NPS Management Policies 2006*, Ch. 6 ("Wilderness Preservation and Management"), especially ¶¶ 6.2.1.2, 6.2.2.1, and 6.3.1. Once these nonconforming or incompatible conditions have been removed or eliminated, the Secretary shall designate these lands wilderness by publishing a notice in the *Federal Register*. *See* Pub. L. No. 94-567, § 3 (Oct. 20, 1976).

[2] There is no Senate Committee Report.

1997 to present: Stipulated Agreement between Marin County and Johnson Oyster Company concerning various compliance and authorization requirements. Court continues to retain jurisdiction as all the requirements have not been met.

2003 to present: California Coastal Commission's Cease and Desist Order concerning various compliance and authorization requirements. This Order, and the continuing notices of violation, concern onshore development by the Oyster Company, which still does not have the required coastal development permit. On June 5, 2007, the California Coastal Commission wrote to Drakes Bay Oyster Company concerning "potential impacts to sensitive resources in Drakes Estero" and the need to obtain a coastal development permit for the offshore aquaculture operations as well.

2004: California Department of Fish & Game renews water bottom leases for an additional 25 years, contingent on the Reservation of Use and Occupancy and compliance "with all rules and regulations now or hereinafter promulgated by any governmental agency having authority by law..." The State has acknowledged that NPS has primary management authority over the subject tidal and submerged lands. CDF&G letter to Supt. Neubacher (May 15, 2007).

2005: Drakes Bay Oyster Company's purchase of Johnson Oyster Company for an undisclosed price.

- Mr. Lunny bought the remainder of the Reservation of Use and Occupancy with full knowledge of the 2012 expiration date, the Solicitor Office's opinion on termination in 2012, the Stipulated Agreement with the County, and the California Coastal Commission's Cease and Desist Order.
- Extensive record of correspondence on this matter since 2005 regarding the National Park Service's concerns relating to the oyster farming operations in Drakes Estero, including impacts to the natural conditions. Park managers must take into consideration a multiplicity of environmental laws that govern these resources including the Point Reyes National Seashore Act, the National Park Service Organic Act, the Wilderness Act, the Endangered Species Act, and the Marine Mammal Protection Act.

Going Forward: The National Park Service will again provide Mr. Lunny a draft Special Use Permit for his review. This permit would authorize oyster farming operations on his Reservation and on the adjacent onshore and offshore parkland, subject to restrictions to protect sensitive resources. *See, e.g.,* NPS regulations requiring such authorization at 36 C.F.R. §§ 5.3 (business operations), 5.6 (commercial vehicles), 5.7 (construction of buildings or other facilities). Issuance of Special Use Permits is subject to compliance with the National Environmental Policy Act, but the National Park Service believes that it can expedite such compliance to put in place an interim permit, and then complete compliance on a permit to cover the remainder of the Reservation of the Use and Occupancy in a reasonable timeframe because of the 2012 termination of use. These NPS authorizations are also necessary for Mr. Lunny's compliance with State and local laws.

DRAKES BAY
FAMILY FARM

07/16/07

Don Neubacher
Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

Dear Mr. Neubacher.

We were just informed that you are planning to release "new" science in some form.

We don't know whether or not it's another republished version of Drakes Estero, A Sheltered Wilderness Estuary, letters and/or communications from other scientists or experts, or data or information in some other form.

Regardless of the form, would you please provide the documents and supporting information by Thursday, July 19, so that it can be reviewed prior to Saturday's meeting with Senator Feinstein, National Park Service, California Coastal Commission, Department of Fish and Game and the Marin County Board of Supervisors. This includes:

(1) Document or Report containing new data, analysis and/or information.

(2) Indication if peer-reviewed, and if so, list of reviewers, reviews, responses and revisions, and re-reviews.

(3) References and source material identification.

(4) Complete primary database, including protocols, for all statements or conclusions.

(5) Statistical analysis for all statements and/or conclusions.

(6) Complete letters or documents for any unpublished references or quotations.

(7) With regard to anyone who provides a letter or statement, provide credentials and expertise.

(8) And further, with regard to anyone who provides a letter or statement, indicate whether they have any primary data from Drakes Estero

Our ability to review and to analyze this new science will ensure a more productive meeting.

Thank you.

Kevin Lunny Nancy Lunny

Drakes Bay Family Farms

17171 Sir Francis Drake Blvd.
Inverness, California 94937

t: **415.669.1149**
f: 415.669.1262
w: drakesbayfamilyfarms.com

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National Seashore
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07/12/07

Don Neubacher
Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

Dear Mr. Neubacher,

You have requested a meeting with Drakes Bay Oyster Company and advise that representatives of the National Park Service Western Regional Office, the Office of the Solicitor and the California Coastal Commission will participate.

So that we can properly prepare for this meeting, the following is requested:

[1] Please identify each individual that will attend the meeting, and include title, organization and complete contact information (address, telephone and email).

[2] Provide the proposed agenda, with specificity. If you have documents to present or discuss, in draft or otherwise, we request that they be submitted sufficiently in advance so that they can be fully evaluated prior to the meeting.

[3] If you have issued or received directives or guidance for this meeting, please provide copies so they can be fully evaluated prior to the meeting.

[4] With regard to permits or related documents, please highlight any proposed changes, and provide an explanation for each.

[5] Your letter states: *"regarding the Reservation boundary, as we stated previously, we are prepared to apply the conditions in the Reservation to the area located within the Stevens survey."* Please confirm the Reservation now includes all oyster farm buildings, including those near the water.

Mr. Neubacher, for more than two years, you insisted that a drawing, prepared for the Johnson Oyster Company in 2003, that was specifically prepared to meet a condition of the California Coastal Commission Cease and Desist Order – the Lafranchi drawing – controlled all regulatory and permitting issues. You knew that the Lafranchi drawing was not a boundary survey. You knew the Lafranchi drawing was in error. You knew that the Lafranchi drawing was prepared for "appraisal" and not "boundary" purposes. You knew that the Lafranchi drawing chopped the oyster farm in half. And you knew that any map that cut the farm in two made no practical sense. Notwithstanding, you were adamant. The Lafranchi drawing, by your declaration, was controlling.

Point Reyes
National Seashore
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NAT. RES.
RANGE CONS.
FIRE MGT.
INTERP.
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MAINT.
CONTRACTING
PERSONNEL
BUDGET
CENTRAL FILES

Drakes Bay Family Farms

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Inverness, California 94937

t: 415.669.1149
f: 415.669.1262
w: drakesbayfamilyfarms.com

That decision on your part, as much as anything else, delayed this permit process, prevented us from resolving the Coastal Commission's Cease and Desist Order issues, interfered with our right to conduct business and cost our family farm significant amounts of time and money. At the May 8 Marin County Board of Supervisor's hearing, you testified that the Coastal Commission, not NPS, was the reason for these delays. Plainly, that was not accurate.

Early on, when you raised this issue, you recognized the limitations of the Lafranchi plans and subsequently agreed to have the NPS prepare a formal boundary survey. Then a short time later, without explanation, you reversed from your own recommendation by saying that you would not spend any more money on this project and that if there was going to be a survey, "Lunny will have to pay for it". We were left with no choice. The Drakes Bay Oyster Company then spent over $20,000 in direct costs and more than that in indirect costs and lost opportunities to have a formal boundary survey prepared. We contracted with L.A. Stevens & Associates, a well-known and highly regarded survey firm in Marin County.

When completed, the boundary survey showed that all oyster farm buildings were on the Reservation and that the Lafranchi plans were not accurate. The survey – the Stevens survey – was submitted to you and your staff. Then, with an official survey in hand, one that showed all the oyster buildings on the Reservation, you rejected the formal boundary survey (Stevens) and instead declared that NPS would rely on the incorrect appraisal drawings (Lafranchi). Moreover, Lafranchi stated, in writing, that these drawings were not prepared for boundary purposes and should not be used for such. Your rejection of the Stevens survey, more than a half year ago, was both arbitrary and punitive.

Today, some seven months later, in your letter of June 19, 2007, without explanation, you abruptly reversed yourself again and admit that the Stevens survey (a survey which is consistent with all prior appraisals, descriptions, maps, drawings and permits prepared for the oyster farm since the creation of the PRNS) is now the basis for NPS permits.

Given this history, and to eliminate any possibility of misinterpretation, we request that you confirm, in writing, that (1) the Lafranchi plan was a drawing, not a property boundary survey, for appraisal purposes and not applicable, suitable or appropriate for boundary purposes; (2) that NPS no longer asserts that Lafranchi plans will be raised or considered in permit discussions; and (3) that the oyster farm buildings are properly within the Reservation.

For two and a half years, since shortly after our family purchased the oyster farm, you have insisted that the boundaries would be determined by the Lafranchi drawing. These delays have served as a functional "surtax" on Drakes Bay Oyster Company that undermined our ability to conduct business.

Thank you for your attention to these matters.

Sincerely,

Kevin Lunny & Nancy Lunny

United States Department of the Interior

NATIONAL PARK SERVICE
Point Reyes National Seashore
Point Reyes, California 94956

L3019

L1425
Tract 02-106 PORE

July 2, 2007

Mr. Kevin Lunny
dba. Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

Dear Kevin:

This document will serve as a "Letter of Authorization" (LOA) further extending the terms and conditions contained in Special Use Permit MSC-8530-6000-2010 regarding the well and water system located at the current Drakes Bay Oyster Company Site. This Special Use Permit expired on June 30, 2006 and was previously extended by a "Letter of Authorization" dated June 16, 2006.

The terms and conditions of MSC-8530-6000-2010 are hereby extended for an additional period of one year until July 1, 2008 or until such time as a Special Use Permit addressing Drakes Bay Oyster Company operations and use of non-reserved portions of Tract 02-106 is issued, whichever occurs first. Contingent upon successful resolution of remaining issues between the National Park Service, the California Coastal Commission and Drakes Bay Oyster Company, future Special Use Permits associated with the site will either be combined into a single document or issued for a concurrent period.

For the period of this letter the annual fee of $2,925.00 will remain unchanged and the current quarterly billing schedule of $731.25 will be continued. If you have questions or concerns regarding this "Letter of Authorization," contact Kevin McKay, Special Park Uses Coordinator, at (415) 464-5111.

Sincerely,

Don L. Neubacher
Superintendent

KEMcKay:kem 7/2/07
bcc: Lynn Fosbender

L3019

RECEIVED
Point Reyes
National Seashore

SUPT.

DRAKES BAY
FAMILY FARMS

06/29/07

Don Neubacher
Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

Re: SUP #MSC 8530-6000-2010 Water from Well

Dear Don,

On June 16, 2006, SUP #MSC 8530-6000-2010 "Water from Well" at the Drakes Bay Oyster Farm was extended for one year by a Letter of Authorization, until July 1, 2007.

Drakes Bay Oyster Company requests that another extension of this permit be issued.

Thank you,

Kevin Lunny

Attachments: Water from well SUP
Letter of Authorization

Drakes Bay Family Farms

17171 Sir Francis Drake Blvd.
Inverness, California 94937

t: **415.669.1149**
f: 415.669.1262
w: drakesbayfamilyfarms.com

Form 10-114
Rev. DEC. 99

UNITED STATES DEPARTMENT OF THE INTERIOR
National Park Service

Special Use Permit

Name of Use Water from Well

Date Permit Reviewed 2002 05/08
Reviewed 20 __ ____
Reviewed 20 __ ____
Expires 2006 06/30

Long Term X

Short Term ___

Permit # MSC 8530-6000-2010
Region Park Type No. #

POINT REYES NATIONAL SEASHORE
Name of Area

Johnson's Oyster Company of P. O. Box 69, Inverness, CA 94937 (415) 669-1149
Name or Permittee Address Phone

is hereby authorized during the period from (Time 12:01 am day 01 Month July, 2000), through (Time 11:59 pm

day 30 Month June, 2006), to use the following described land or facilities in the above named area:
Continuing the use of the water well drilled by the Permittee on the non-reserved eastern portion of Tract 02-106. The base fee (established by appraisal dated 06/13/94) of $2,124.00 has been adjusted utilizing the Inflation Calculator to adjust the annual fee to $2,500.00. A quarterly billing schedule of $625.00 will be established.
This permit is contingent on a well drilling and well operating permit having been obtained from the Environmental Health Services Division of the Community Development Agency.

For the purpose(s) of: Supplying water for the Johnson's Oyster Company facilities using Permittee well, pump and pipelines (previously authorized by Permit # WRO PORE 6000-501). The electrical supply and all maintenance of the facilities is the responsibility of the Permittee. The location of the well is identified on the attached "Site Map."

Authorizing legislation or other authority (RE: DO-53): 16 U.S.C. §§ 1, 1a-1, & 3

NEPA Compliance: CATEGORICALLY EXCLUDED X EA/FONSI ___ EIS ___ OTHER APPROVED PLANS ___

PERFORMANCE BOND: Required ___ Not Required X Amount $_____

LIABILITY INSURANCE: Required X Not Required ___ Amount $ 500,000.00 per occurrence.

ISSUANCE of this permit is subject to the conditions on the reverse hereof and appended pages and when appropriate to the payment to the U.S. Dept. of the Interior, National Park Service of the sum of $ 12,500.00.

The undersigned hereby accepts this permit subject to the terms, covenants, obligations, and reservations, expressed or implied herein.

PERMITTEE JOHNSON OYSTER COMPANY 8-28-02
Tom Johnson Signature Date

Authorizing Official Don L. Neubacher 8/29/02
Signature Don L. Neubacher, Superintendent Date

Additional Authorizing Official _____ _____ _____
(if Required) Signature Title Date

State of California – The Resources Agency
ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FISH AND GAME
OFFICE OF THE GENERAL COUNSEL
1416 Ninth Street
Sacramento, CA 95814
http://www.dfg.ca.gov
(916) 654-3821

RECEIVED
National Seashore
MAY 18 '07
SUPT.
SCIENCE
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LAW ENFORC.
NAT. RES.
RANGE CONS.
FIRE MGT.
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CONTRACTING
PERSONNEL
BUDGET
CENTRAL FILES

L1425
02-106

May 15, 2007

Mr. Don Neubacher, Superintendent
Point Reyes National Seashore
Point Reyes Station, California 94956

Re: Drake's Bay Oyster Company

Dear Superintendent Neubacher:

The purpose of this letter is to memorialize the position of the Department of Fish and Game (Department) regarding the lease status of the above-referenced mariculture operation at Drakes Estero, within the Point Reyes National Seashore (PRNS). For the reasons discussed below, we conclude that the mariculture operation in question is properly within the primary management authority of the PRNS, not the Department.

By way of review, the leasing of state water bottoms at Drakes Estero dates to at least 1934. In 1965, the California Legislature granted to the United States, subject to certain limitations, "all of the right, title, and interest...to all of the tide and submerged lands or other lands beneath navigable waters" situated within the boundaries of the PRNS (Chapter 983, Statutes of 1965). The tidelands and submerged lands encompassed by this legislative grant include the leased state water bottoms. Consistent with article 1, section 25 of the California Constitution, this conveyance carried a reservation of the right to fish in the waters overlying these lands. Although the right to fish extends to both commercial and sport fishing, it does not extend to aquaculture operations. Regardless of whether its purpose is commercial or recreational, *fishing* involves the take of public trust resources and is therefore distinct from aquaculture, which is an agricultural activity involving the cultivation and harvest of private property (Fish and Game Code §§ 17, 15001, 15002, 15402). In November 1972, the Johnson Oyster Company (Johnson) conveyed its property to the United States, subject to a reservation of occupancy and use in the grant deed, which provided:

> "Upon expiration of the reserved term, a special use permit may be issued for the continued occupancy of the property...provided, however, that such permit will run concurrently with and will terminate upon the expiration of State water bottom allotments assigned to the Vendor. Any permit for continued use will be issued in accordance with National Park Services regulations in effect at the time the reservation expires."

The reservation specifies a 40-year term and additionally requires, among other things, that Johnson comply with all applicable health and safety laws, and all rules and regulations of the National Park Service. This reservation expires in November 2012.

After that time, aquaculture operations must continue subject to a special use permit that would run concurrently with, and would terminate upon, the expiration of the assigned State water bottom allotments. Since such allotments are subject to a maximum lease term of 25 years, both the grantor and grantee apparently contemplated that the state water bottom leases then in effect could be renewed, and this was in fact done in 1979. In June 2004, the Fish and Game Commission (Commission) renewed the state water bottom lease for an additional twenty-five years, contingent on this reservation, and also required Johnson to comply "with all rules and regulations now or hereinafter promulgated by any governmental agency having authority by law..." In March 2005, the Commission authorized the assignment of the state water bottom lease to Johnson's successor, Drakes Bay Oyster Company.

The 2004 lease renewal is expressly contingent upon the aquaculture facility's compliance with the 1972 grant reservation and, after its expiration, with any special use permit that PRNS may issue in its discretion. The reservation requires compliance with all applicable health and safety laws and, specifically, with all rules and regulations of the National Park Service. Conversely, the renewal imposes an additional requirement of compliance with all other applicable laws, which reasonably includes those of the National Park Service and of PRNS in particular. For these reasons, we believe the mariculture operation in Drakes Estero is properly within the primary management authority of the PRNS, not the Department.

Should you or any of your staff require any additional assistance, please contact Senior Staff Counsel Joseph Milton, Office of the General Counsel, at (916) 654-5336 or jmilton@dfg.ca.gov.

Sincerely,

for L. RYAN BRODDRICK
Director

cc: Mr. Ralph Mihan, Office of the Solicitor
U.S. Department of the Interior

Mr. Joseph Milton, Senior Staff Counsel
Department of Fish and Game

L1425
Tract 02-106 PORE

June 12, 2007

Mr. Kevin Lunny
Drakes Bay Oyster Company
17300 Sir Francis Drake Blvd.
Inverness, CA 94937

Dear Kevin:

We received your letter dated May 26, 2007, regarding the motorized boat in Drakes Estero on May 24, 2007. Two National Park Service researchers were sent to the Estero to finalize some eelgrass mapping efforts and check oyster bag locations, and entered the area at low tide so oyster operation bag locations could be reviewed.

As required by policy, the NPS did complete a "minimum requirement" process to adhere to the Wilderness Act and discussed options to ensure no harbor seals and pups were disturbed. The trip was guided by NPS biologist's expertise to ensure minimum disturbance to seals and other wildlife, and to avoid eelgrass beds. No trip report was prepared. The NPS previously entered the estero by motorized craft on two occasions in early March 2007 during the beginning of the pupping season and avoided areas where seals hauled out. A trip report is enclosed. No survey by motorized craft was conducted in 2006 during the pupping season.

The action was authorized by my office. We hope this answers your questions.

Sincerely,

Don L. Neubacher
Superintendent

Enclosure

DLNeubacher/SAllen:an 06/12/07

Drakes Estero eelgrass, oyster bag, and oyster rack assessment
Trip Report - 3/20/2007

Crew: Don Brown, GIS Specialist, Point Reyes National Seashore
Ben Becker, Marine Ecologist, Point Reyes National Seashore

Equipment: 13 ft Alumicraft skiff with 15 hp 4-stroke outboard motor.
Trimble GeoExplorer3 GPS with real-time differential correction.

03/13/2007
Oyster rack, bag, line and eelgrass assessment

Objectives

1. Map all oyster racks in the estero and categorize as active, inactive or dilapidated. Dilapidated racks were defined as those considered too deteriorated for use.
2. Document any apparently recent repair work done to racks.
3. Map all oyster bags and line systems.
4. Report eelgrass occurrence (dense/patchy/absent) both adjacent and beneath all racks, bags and lines.

Field Methods: We launched from Drakes Bay Oyster Company (DBO) at ~11 AM and a + 3 ft tide, and traveled from North to South visiting all racks in the Estero. At each rack, we recorded whether the rack was surrounded by dense or patchy eelgrass, if eelgrass was present beneath the rack, the percentage of the rack currently occupied with oysters (= percent active), and the percent of the racks dilapidated. We mapped all visible bag systems along the intertidal and investigated all marker poles that are often used to mark where bags are kept. Survey was completed at ~2:45 PM and tide appeared to be about 0 ft.

Summary Results: There are a total of 93 oyster racks in varying states of integrity in Drakes Estero. On 03/13/2007, 63 racks were usable and had some mariculture activity (2 of which were recently repaired), 3 appeared usable but had no mariculture activity on that day, and 27 racks were so dilapidated that they are unlikely to be usable without repair. The unusable racks ranged from frames with no cross members for hanging oysters to merely a set of old posts.

A total of 89 of the 93 racks were in eelgrass beds, but no usable racks and very few dilapidated racks had eelgrass growth underneath. Seven of 27 dilapidated racks had some eelgrass regrowth, likely due to lack of mariculture on the racks. The area of racks within eelgrass beds but no eelgrass growth underneath oyster racks was 8 acres.

There were 12 areas where oyster bags are scattered in intertidal areas covering a total of approximately 10 acres (some site areas estimated from a distance). Since eelgrass does not grow in intertidal areas, these bag sites come up to the edge, but are not within eelgrass areas. There were also many anchored and floating oyster bag lines which were mapped. Two oyster bag arrays (approximately 5 acres) were within a regular harbor

seal haul out site, and one other oyster bag site was within 50 meters of a regular harbor seal haul out site, however, no hauled out seals were sighted on this survey.

In total, all oyster growing activity covers ~18 acres in the estero.

Most of the apparently older and larger oysters growing on racks had extensive non-native, highly invasive tunicates (*Didemnum* Species A) growing on them (See images). This species is an aggressive invader that has had substantial ecosystem and financial impacts in New Zealand, several west coast estuaries and the Grand Banks off Newfoundland. Other fouling organisms (native and non-native sponges, tunicates, bryozoans, and mussels) were observed on both oysters and racks throughout the estuary.

03/20/2007
Eelgrass satellite imagery ground truthing

Objectives

1. Ground truth satellite imagery classification of eelgrass beds.
    - Imagery used for classification was one-meter color digital orthophoto taken August 2005 at low tide classified using Erdas Imagine software.
2. Document any additional racks, bag or line systems not seen on day 1.

Field Methods: Beginning at ~ 10:30AM on 03/20/2007 at about a 0 ft tide, we surveyed the estero to ground truth a draft eelgrass bed map derived from satellite imagery. We traveled the perimeter of the eelgrass beds to verify changes from eelgrass to bare substrate, as well as to verify that eelgrass was dense or patchy within beds. We defined dense as close to 100% cover, patchy was considered down to 40% cover. We also verified that vegetation classified as eelgrass was not *Sargassum muticum* (as happened near the mouth of the estero) or enteromorphic algae (as occurred near some of the seal haul out sand flats in the middle of the estero). We took a total of 243 points throughout the estero noting eelgrass presence/absence/ dense/patchy to reclassify the satellite derived map to reflect actual field conditions. The survey was completed at ~1:30 PM and tide appeared to be about +3 ft.

Summary Results: In the field, the vast majority of satellite derived eelgrass classification appeared correct. Two shortcomings were that (1) channels are too deep to see eelgrass, even at low tide and (2) that during high tide in waters > 4 ft deep with windy conditions, choppy waters, and low sunlight, it was often difficult to see past 3 ft from the surface. In these instances we traveled very slowly until we came to an area shallow or calm enough to see bare bottom or eelgrass.

After analyzing ground truth data, ~ 95% of ground observations appeared to match to satellite image classification. Discrepancies mostly occurred in the southern part of the bay because of misclassification of *Sargassum muticum* and enteromorphic algae, as mentioned previously.

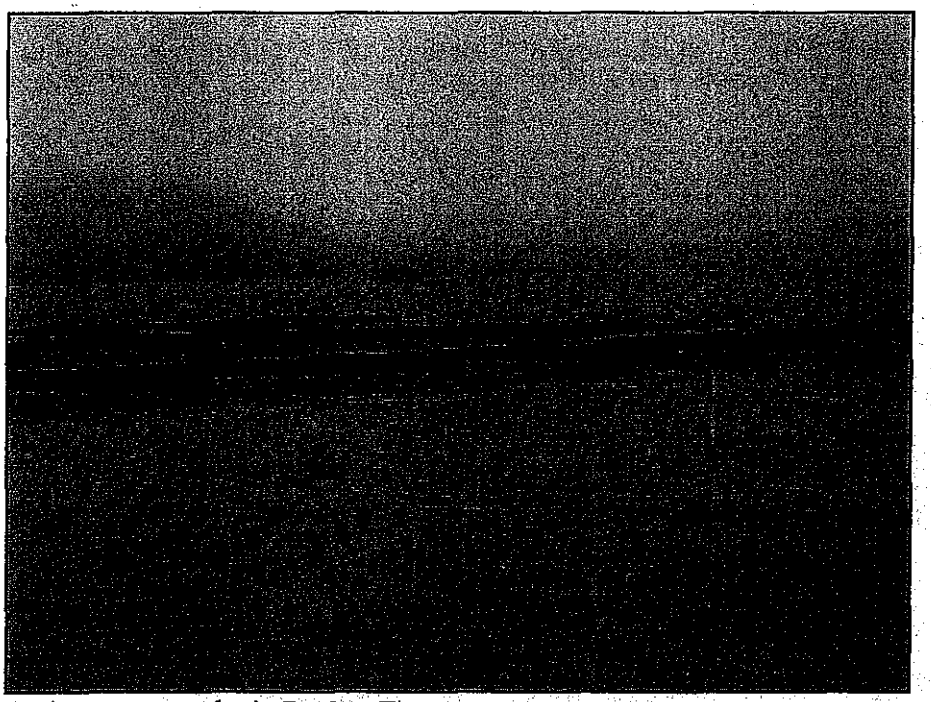
We calculated that 740 acres of the estero are covered by eelgrass, 355 acres dense, and 385 acres patchy. Oyster operations in eelgrass represent ~ 8.5 acres. We calculate that 8 acres (some dilapidated racks have patchy regrowth) of eelgrass beds are lost in Drakes Estero due to mariculture. Another factor affecting eelgrass beds which was noticed was boat propellers. It can be seen from aerial and satellite photos where regular boat paths have cut paths through eelgrass; these calculations do not reflect this factor which will necessitate further study.

We also documented three additional intertidal oyster bag systems not identified during the first survey.

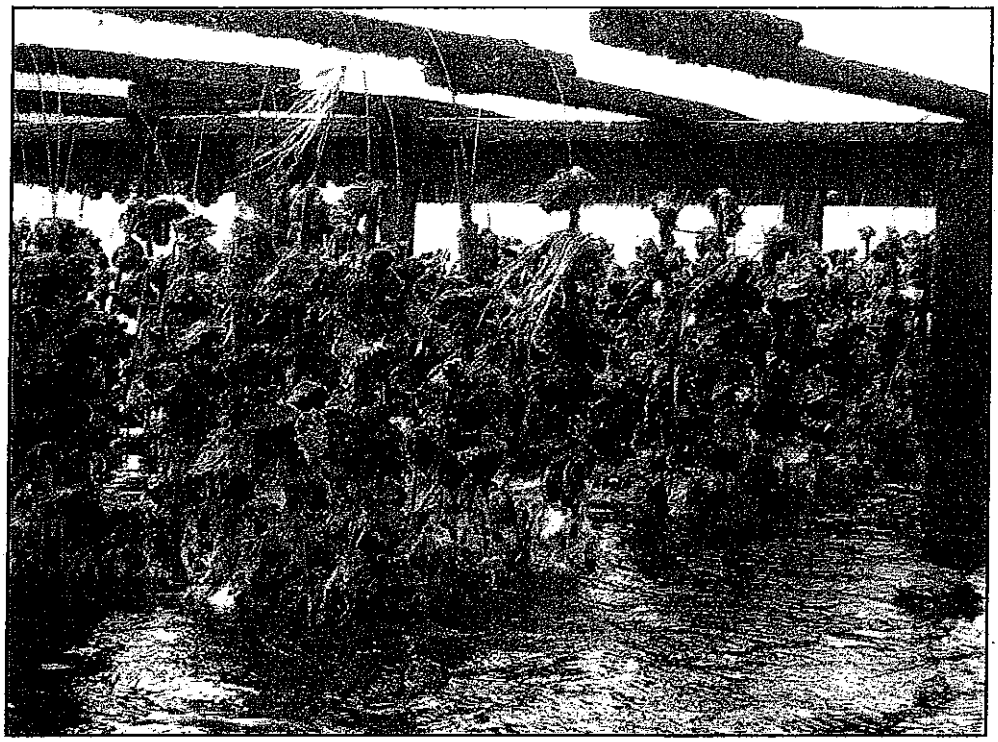
Summary Statistics

Total Oyster Racks	**93**
Usable Oyster Racks	**66**
Dilapidated racks	**27**
Percentage of racks in eelgrass beds	**96% (89 of 93)**
Percentage of usable racks with eelgrass underneath	**0%**
Percentage of dilapidated racks with eelgrass regrowth	**26% (7 of 27)**
Acres of eelgrass lost to racks	**8 acres**
Number of intertidal oyster bag areas	**12**
Acreage of intertidal oyster bag sites	**10 acres**
Total eelgrass acreage in the Estero	**740 acres**

Images



Active oyster racks in Drakes Estero.



Non-native tunicates (*Didemnum* spp. A) growing on oysters.

Floating bag system tethered by ropes.

RECEIVED
Point Reyes
National Seashore
MAY 29 '07
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LAW ENFORC.
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DRAKES BAY
FAMILY FARMS

05/26/07

Don Neubacher
Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

Hand-Delivered and Sent by US Mail

Re: NPS Motorized Boat in Seal Pupping Area During Pupping Season

Dear Mr. Neubacher,

Drakes Bay Oyster Company is writing to find out why, on May 24, 2007, two National Park Service (NPS) officials launched a motorized boat into Drakes Estero, proceeding to the mouth of the Estero, traveling completely across the lateral channel at Barries Bar, at low tide, at high speed and did this during seal pupping season and at the precise time when seals and their pups are on the beaches.

All of this violated NPS rules which ban going into this area of the Estero at this time.

Please provide responses to the following questions:

(1) Identify the two NPS officials in the boat.

(2) Identify the NPS official who gave them this assignment.

(3) Provide us with a copy of the directive or assignment.

(4) Why was the Drakes Bay Oyster Company manager, Jorge Mata, informed by your staff they were directed to "check eelgrass," when they passed the eelgrass areas in the Estero and proceeded directly to the seal pupping area? Why did the staff mislead our manager?

(5) Why were they directed to inspect this area during a NPS rule forbidding such entry at this time?

(6) Why did they go out at low tide, when seals frequently use the beaches?

Drakes Bay Family Farms

17171 Sir Francis Drake Blvd.
Inverness, California 94937

t: **415.669.1149**
f: 415.669.1262
w: drakesbayfamilyfarms.com

(7) Why were they proceeding at too fast a speed?

(8) Provide a copy of the trip report.

(9) How many times has the NPS staff gone to the seal pupping area during pupping season?

(10) Provide trip reports for each of the trips in 2006 and 2007 during pupping season.

Sincerely,

Kevin Lunny

Nancy Lunny

United States Department of the Interior

NATIONAL PARK SERVICE
Point Reyes National Seashore
Point Reyes, California 94956

D5031
→ X L1425 02106
May 23, 2007

Mr. Kevin Lunny
17171 Sir Francis Drake
Inverness, CA 94937

Dear Kevin:

Paul Robinson with the United States Public Health Service has scheduled to conduct on site inspections of ranch employee residential units situated within Point Reyes National Seashore on June 13, 2007 and June 14, 2007. The inspections will last approximately one or two hours and will include an evaluation of water and wastewater systems. National Park Service Staff will accompany Mr. Robinson during the inspections.

You will be contacted prior to June 13, 2007 and informed of a scheduled time of arrival. If you have questions or concerns please contact Kevin McKay, Special Park Uses Coordinator, at (415) 464-5111. Thank you for helping to keep Point Reyes National Seashore Ranches safe.

Sincerely,

Don L. Neubacher
Superintendent

KEMcKay:kem 5/22/07

L1425
Tract 02-106 PORE

May 21, 2007

Mr. Kevin Lunny
Drakes Bay Oyster Company
17300 Sir Francis Drake Blvd.
Inverness, CA 94937

Dear Kevin:

We received your letter dated April 18, 2007, regarding the Drakes Bay Oyster Company (DBOC) and the California Coastal Commission (CCC) Cease and Desist Order CCC-03-CD-12 (CDO). Below is our response item by item to issues addressed in your letter.

Coastal Commission [Order] Issued to Previous Owners, Not Drakes Bay Oyster Company (Lunny Family). We understand that the original CDO was issued on December 11, 2003 against Johnson Oyster Company, Inc., the prior owner of the business. Nevertheless, our review of CCC correspondence indicates that when DBOC purchased the business, it acknowledged that it was assuming the responsibility of complying with the CDO. For example, in a letter dated April 10, 2006, DBOC wrote to the CCC, "Drakes Bay Oyster Company assumed the responsibility to comply with the CDO with the purchase of the leasehold interest and shellfish business from Johnson Oyster Company in 2005." Thus, DBOC is currently subject to the CDO.

While we acknowledge that DBOC has made efforts to remove the CDO, it is also clear that DBOC has been unable to remove the CDO for several reasons that have been well-documented in correspondence from the National Park Service (NPS) and CCC. First, DBOC has failed to meet deadlines set by the CCC. Second, DBOC has not agreed to an NPS permit. Third, DBOC has engaged in new violations of the CDO and the Reservation of Use and Occupancy (ROP) since acquiring the business.

Part of the original CDO required the submission of a coastal development permit application (CDPA). The original deadline was 60 days after the December 11, 2003 issuance of the CDO. On May 11, 2005, the CCC informed DBOC that it must submit a complete CDPA no later than June 1, 2005. The CCC also stated that a proposed site plan and project description were required by that date. In 2005, the NPS also informed DBOC that a site plan was required before any NPS permits could be issued. Since that

time, DBOC has repeatedly failed to meet deadlines for the submission of the site plan, detailed drawings, and project description.

On January 20, 2006, the CCC set a new deadline for the submission of the CDPA and directed DBOC to submit a complete CDPA no later than January 27, 2006. While DBOC met the deadline for submitting the application, it was incomplete. On February 22, 2006, the CCC informed DBOC that its project description and site plan must be revised. In a subsequent letter dated March 21, 2006, the CCC reiterated the requirement to submit a detailed project description and site plan and set a new deadline of April 28, 2006.

NPS did not receive final site drawings regarding the proposed development of the site until August 2, 2006, after repeated email requests to provide the drawings for NPS review. During an August 15, 2006 meeting, DBOC then indicated that it might modify the project. However, NPS did not receive modified drawings until five months later, on January 12, 2007. In addition, these drawings were an overall draft site plan and did not contain the details regarding the dock and other site features discussed in the meeting. While NPS did receive a revised site plan on January 29, 2007, it did not contain the required details of site features, such as repairs to the dock. CCC staff has informed NPS that the final detailed drawings required for the CDPA were received on March 26, 2007 over three years after the issuance of the original CDO.

DBOC's failure to agree to an NPS permit will be discussed below as will DBOC's new violations of the CDO and ROP since acquiring the business.

Superintendent Fails to Approve Permit for Remaining Issues in Cease and Desist Order. It is our understanding that the CCC will not authorize work on the commercial buildings without a coastal development permit. As discussed above, DBOC's delays in completing a final project description, detailed drawings, and site plan have meant that the permit application to NPS has just been completed as of May 2, 2007. Consequently, the delay in completing the permit application has meant that there has been a delay in the authorization for the work on the commercial buildings.

In addition, the NPS has repeatedly informed DBOC that NPS would require a site plan before any permit could be approved and that all improvements would be subject to an environmental review as mandated by the National Environmental Policy Act (NEPA) and NPS policy. NPS has also repeatedly informed DBOC that NPS could not determine the level of environmental review necessary until NPS received the final project description, detailed drawings, and site plan. As early as March 28, 2005, NPS wrote to Mr. Lunny informing him that a site plan was necessary before NPS could issue any permit. NPS also stated that when the site plan was received park staff could begin environmental screening under the National Environmental Protection Act (NEPA). NPS re-informed DBOC in writing of the NEPA requirement on at least three additional occasions in letters dated August 18, 2006, January 25, 2007, and February 12, 2007. NPS has just received the detailed drawings for the site plan that will enable NPS to determine the level of review required by NEPA.

National Park Service Refuses to Explain Why Permit Unapproved for More than a Year. As explained above, NPS has informed DBOC that a permit could not be approved until the final project description, detailed drawings, and site plan were complete and the appropriate level of NEPA review determined. In addition, a permit has not been completed because DBOC does not agree to be under an NPS permit for the land and waters of Drakes Estero. In a January 29, 2007 letter to NPS, DBOC stated that it disagrees with NPS that an NPS permit is need for park waters and estero submerged lands.

The NPS has clearly informed DBOC that the waters of Drakes Estero are under NPS jurisdiction and will require a permit from the NPS. As we stated in our February 12, 2007, letter, the 36 Code of Federal Regulations 5.3 states: "Engaging in or soliciting any business in park areas, except in accordance with the provision of a permit contract or other written agreement with the United States, except as such may be specifically authorized under special regulation applicable to a park area, is prohibited." In turn, the 36 Code of Federal Regulations 1.2 states: "Applicability and Scope: a) The regulations contained in this chapter apply to all persons entering, using, visiting or otherwise within: (1) The boundaries of federally owned lands and waters administered by the National Park Service."

As we have also discussed, the tide and submerged lands in the Drakes Estero were conveyed to the United States in 1965 by the California legislature. As the owner of tide and submerged lands, the Seashore Act and Wilderness Act requires the NPS to use such lands for public purposes and any third party use must be in conformance with those acts.

Finally, the NPS wants to clarify that DBOC has not met many of its obligations under the ROP and has violated the terms of the ROP, CDO, and several federal laws and regulations. On three separate occasions, DBOC has committed new violations as outlined below.

In the fall of 2005, Mr. Lunny was observed on NPS land, outside the ROP area, constructing a new septic system without authorization or a permit from the NPS. The NPS told DBOC to stop construction and receive an authorization before any work could continue. This was a direct violation of the terms of the ROP, which provides among other things that:

6. [DBOC] shall abide by all rules and regulations pertaining to National Park System areas.

7. No permanent or temporary structure, sign or other improvement of any type whatsoever shall be erected by [DBOC] in or upon the reserved premises or improvements without the prior written approval of the Director.

After a meeting and additional consultation with NPS, a letter of authorization was issued to DBOC.

On December 28, 2005, the NPS inspected the site and found two large storage containers, a construction trailer, and plumbed oyster tanks that had not been approved by the CCC. NPS had directed DBOC to obtain the proper permits before installing these facilities. These violations were noted in a CCC letter to DBOC dated January 20, 2006. In addition, the site visit revealed that DBOC had stored excavated material on NPS land adjacent to the ROP without NPS approval. Finally, an abandoned car was moved from the ROP area and placed on NPS land without NPS approval. DBOC has since removed the car and excavated material from NPS lands.

In February 22, 2006, another letter from the CCC documented that DBOC had paved a substantial part of the ROP area without proper permits or NPS approval. In addition, the NPS documented in its February 23, 2006, letter that a February 17, 2006, site visit revealed the DBOC had violated its ROP agreement by paving a major area and constructing a fence without NPS approval as required.

Despite these additional violations, we do want to acknowledge that DBOC has made progress on cleaning up the site, and we appreciate these efforts. However, the Drakes Bay estuary is a significant feature of this national park unit that deserves careful attention.

As we stated above, NPS has just received the detailed drawings and site plan that will enable NPS to determine the level of review required by NEPA. We will contact you soon regarding environmental analysis of your proposed site improvements and use of the estuary. If you would like copies of any of the correspondence discussed in this letter, please do not hesitate to contact us as well.

Also, we are willing to meet with you any time regarding the special use permit for use of the estuary waters and shoreline area. We have sent you several draft copies and have not received any additional comments. Please call Kevin McKay, Special Use Permit Coordinator, 415-464-5111, if you can meet with us.

Sincerely,

Don L. Neubacher
Superintendent

cc:
NPS Field Solicitor, Pacific West Region
Regional Director, Pacific West Region

bc:
Special Park Uses Coordinator

DLNeubacher/SCarlson:an 05/21/07

Don Neubacher
04/23/2007 05:53 PM PDT

To: kevin@drakesbayoyster.com
cc:
Subject: Reponse to Letter

Kevin, the Seashore we will be responding to your April 18 letter pending staff input and legal review; I will be gone for several days this week and we will not be able get a response to you until next week.

We are glad to see spring show up this week.

Don

Don Neubacher
Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

415-464-5101 (office)
415-233-0303 (cell)
415-663-8132 (fax)

The National Park Service cares for special places saved by the American people so that all may experience our heritage.

RECEIVED
Point Reyes
National Seashore
APR 18 '07
SUPT.
SCIENCE
SPEC. PK. USES
LAW ENFORC.
NAT. RES.
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FIRE MGT.
INTERP.
CULT. RES.
MAINT.
CONTRACTING
PERSONNEL
BUDGET
CENTRAL FILES

April 18, 2007

Hand-Delivered and Sent by US Mail

Don Neubacher
Superintendent
Pt. Reyes National Seashore
1 Bear Valley Road
Pt. Reyes Station, CA 94956

Re: Nationl Park Service Failure to Approve County of Marin Permit Allowing Completion of Tasks to Comply with California Coastal Commission Cease and Desist Order Against Johnson Oyster Company.

Dear Mr. Neubacher

On December 11, 2003, the California Coastal Commission issued a Cease and Desist Order (CDO) against the Johnson Oyster Company, Inc. for a series of health, safety, environmental and Coastal Act violations at their Pt. Reyes oyster farm and aquaculture business[1]. This letter addresses the disposition of that Order.

Violations Leading to Coastal Commission Cease and Desist Order Existed for More Than 15 Years – NPS, Coastal Commission and County Unable to Resolve – Previous Owners Refuse to Comply, Lunny's Move to Address and Finalize. Various health, safety, environmental and building code violations have been an issue for many years – more than a decade and a half – and were well-known throughout the Pt. Reyes community[2]. Notwithstanding the California Coastal Commission's 2003 CDO, the problems and issues remained uncorrected and unresolved at the time the Drakes Bay Oyster Company purchased the Johnson Oyster Company, Inc., in

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1 See, California Coast Commission, Th-16a, Staff Report for Commission Cease and Desist Order, # CCC-03-CD-12 and Violation File V-7-03-04.

2 According to various reports, including the California Coastal Commission, these problems were documented as far back as the late 1980's. These were chronic, persistent, unaddressed and unresolved until the Lunny Family, dba, Drakes Bay Oyster Company acquired the shellfish operation and immediately began rectifying each and every one of the outstanding health, safety, environmental and permit issues.

Drakes Bay Family Farms

17171 Sir Francis Drake Blvd.
Inverness, California 94937

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w: drakesbayfamilyfarms.com

January 2005, some 14 months after the CDO was issued.

New Owners – 2005 – Voluntarily Agree to Address and Resolve All Issues in Cease and Desist Order. As part of the purchase, the Drakes Bay Oyster Company voluntarily agreed to accept responsibility for correcting these various issues, including bringing the commercial business buildings up to code. Immediately after purchase, the Drakes Bay Oyster Company began systematically correcting each and every one of the ten major items.

Within 24 Months, Cease and Desist Issues Resolved by New Owners – Drakes Bay Oyster Company. Within months, and consistent with a general timetable worked out with the California Coastal Commission, eight of the ten health, safety and environmental issues were fully resolved – by the Drakes Bay Oyster Company. For more than a decade and a half, the National Park Service, County of Marin, California Coastal Commission and the Pt. Reyes community were unable to resolve health, safety and environmental issues at Drakes Estero with the Johnsons – the previous owners of the shellfish company. In less than 24 months, the Drakes Bay Oyster Company resolved each, except two in which the National Park Service blocked without reason or explanation.

New Owners Spend More Than A Third of a Million Dollars Correcting Preexisting Health, Safety and Environmental Problems. To date, Drakes Bay Oyster Company spent upwards of a third of a million dollars – correcting problems we had no role creating.

Superintendent Fails to Approve Permit Enabling Restoration of Commercial Buildings As Required to Comply with Cease and Desist Order. The last of these items in the Cease and Desist Order, bringing the commercial buildings up to code, was scheduled to be resolved more than a year ago. An evaluation was undertaken and completed. Planning was completed. A contract was issued and a contractor selected. In order to initiate construction activities, the County of Marin requires the written approval of the Superintendent, Pt. Reyes National Seashore Park, prior to issuing needed County permits. However, for more than a year, you, as Superintendent, refused to allow the County of Marin to issue the necessary building permits. Absent your concurrence, the County permit cannot be acted upon, the investment in bringing the commercial buildings up to code is blocked and the remaining issues in the Cease and Desist Order cannot be corrected[3]. As a result, the Cease and Desist Order remains in place.

Clarification – Coastal Commission Issued to Previous Owners, Not Drakes Bay Oyster Company (Lunny Family). Let me be clear here. The California Coastal Commission never issued a CDO to the Drakes Bay Oyster Company. The C&D was issued to previous owners more than a year prior to our purchase of the operation.

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[3] The County of Martin permit requiring your concurrence was first submitted to the Marin County Community Development Department more than a year ago.

Superintendent Fails to Approve Permit for Remaining Issues in Cease and Desist Order Imposing Severe Penalties on Drakes Bay Oyster Company,Undermining Integrity of Lease. Your decision as Superintendent, to block corrective action, has made it impossible for our company to correct structural deficiencies. Additionally, our inability to correct these structural deficiencies and fulfill the legal obligations of the CDO has harmed, and with each passing day, continues to harm, our Company in numerous instances, including, but not limited to:

* *allowing* the buildings to deteriorate further;

* *increasing* the cost of correcting these items;

* *compelling* customers and visitors to stand "inside" the building and be rained upon – from holes in the roofs and structure – undermining our relations with customers and harming our business opportunities;

* *denying* us the right to our full leasehold interests;

* *interfering* with our valid contract rights;

* *harming* our name – local people, visitors are being told that we – the Lunny's – created this problem and had the CDO slapped on us for mismanagement; and,

* *exposing* Drakes Bay Oyster Company, needlessly, to potential liabilities due to uncorrected CDO health and safety violations which would be fully corrected if you concurred with the pending County permit.

National Park Service Refuses To Explain Why Permit Unapproved for More than a Year. Neither you, as Superintendent, nor anyone else from the National Park Service provided a reason for this delay, or communicated with Drakes Bay Oyster Company regarding this matter. Other than NPS relying upon an inaccurate survey, no further information of any kind has been requested by you or your National Park Service staff.

Delay Inexplicable – Constitutes Hidden Tax on Drakes Bay Oyster Company. This delay is inexplicable and now, punitive. Functionally, these actions, inactions as well as other decisions have imposed a hidden tax of tens – hundreds – of thousands of dollars and is undermining the integrity of Drakes Bay Oyster Company and its right to conduct business pursuant to a valid lease.

Immediate Action Items – Execute the Permit, Provide Explanation and Issue Clarification. In light of all the above, the Drakes Bay Oyster Company respectfully requests that you approve,

within five days of the receipt of this letter, the Marin County permit papers necessary to allow us to proceed with work to bring the several commercial buildings up to current building code and respond to the additional requests set forth below.

To that end, please provide the following:

(1) **A signed and properly executed letter or other appropriate documentation authorizing the County of Marin to issue a permit allowing the commercial buildings to be brought up to code;**

(2) **A full and complete explanation as to why you withheld – blocked – concurrence on the County of Marin permit for now more than year, and by what authority was concurrence withheld;**

(3) **A letter, signed by you, addressed to the Drakes Bay Oyster Company, acknowledging that the Lunny family, the owners of Drakes Bay Oyster Company, had no role or responsibility for creating these violations that led to the issuance of the CDO in the first place, and that, with the purchase of the company, voluntarily accepted the responsibility for addressing and correcting the issues itemized in the CDO. Such a letter is required to clarify incorrect and erroneous and other misinformation that persists to the contrary; and,**

(4) **Upon completion of the work on the commercial buildings, we request a letter from you indicating that all issues in the CDO are fully resolved – and again reiterating that the Drakes Bay Oyster Company had no role creating these various violations.**

Lunny Family – Rich, Proud History in Pt. Reyes Community – Building on 500 Generations of Oystering in Drakes Ostero. The Lunny family – now four generations – has a rich history in our Pt. Reyes community. We're proud of our organic beef and sustainable farming and ranching practices. And today, we're proud to join the ranks of the 500 generations who came before us growing and harvesting oysters and other shellfish in Drakes Estero. Today, our Drakes Estero Oysters represent half of the State of California's shellfish growing area pursuant to our 2029 lease and that production serves markets and restaurants locally throughout the San Francisco Bay Area.

Lunny Family – Resolving Conflicts that the National Park Service, Coastal Commission, County of Marin and the Pt. Reyes Community Evaded Resolution for More than 15 Years. And, finally, the Lunny Family – owners of Drakes Bay Oyster Company – are proud that we were able to resolve health, safety and environmental problems that confronted the various

Federal and State agencies, everyone in our community and those who come to visit the Point Reyes National Seashore.

Summary Chart Displaying Completed Action Items from Cease and Desist Order by Drakes Bay Except Single Issue Blocked by Superintendent. Attached to this letter is a "Summary Chart" showing that all issues identified in the Cease and Desist Order have been complied with except that issue being blocked by the NPS.

Sincerely,

Kevin Lunny
Drakes Bay Oyster Company

California Coastal Commission
Cease and Desist Order # CCC-03-CD-12 Against
Johnson Oyster Company, Inc.
December 2003

This chart is included to provide a ready status for each of the major outstanding issues subject to the Cease and Desist Order issued by the California Coastal Commission against the Johnson Oyster Company in 2003.

Cease and Desist Action Item	Action
[1] Finish Septic System and Obtain Final Inspection from County and Bring Commercial Buildings up to code.	**Resolved**. Obtained final inspection and approval from Marin County Environmental Health Services.
[2] Remove Debris and Properly Fill Seepage Pit Area Where Oyster Processing Water Was Discharged.	**Resolved**. Cleaned up and filled pit area. Obtained necessary permits to construct oyster processing wastewater septic system and completed installation, final inspection and approval of new system.
[3] Clean Up Debris Adjacent to Operations.	**Resolved**. Removed approximately 1,800 cubic yards of debris.
[4] Obtain Food Establishment Permit from County of Marin.	**Resolved**. Not required by County as food facility is on federal property. Drakes Bay Oyster Company food facility registration # 14916607102 is permitted by the US Food and Drug Administration, Dept. Of Health and Human Services.

[5] Obtain Drinking Water Permit from the County of Marin.	**Resolved**. Not required by County as Drakes Bay Oyster Company is on Federal property. Public water system is permitted – # 2110510 – by the California Department of Health Services.
[6] Obtain Housing Inspections.	**Resolved**. US Public Health Services performs routine inspections on all housing on premises [Note, we were advised that during the 30 years the Johnson's owned the shellfish farm, NPS did not inspect any of the worker housing – inspections only began after the Lunny's acquired the farm.]
[7] Remove Illegal/Unauthorized development.	**Resolved**. All non-permitted housing, storage buildings, refrigeration units, additions and miscellaneous debris were removed from premises.
[8] Obtain County of Marin Building permits to repair buildings.	***CANNOT PROCEED DUE TO FAILURE OF NPS PARK SUPERINTENDENT TO ALLOW MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY TO ISSUE PERMITS.***
[9] Submit Plans to NPS for Buildings to Remain.	**Resolved**.
[10] Bring Commercial Buildings Up to Code.	***CANNOT PROCEED DUE TO FAILURE OF NPS PARK SUPERINTENDENT TO ALLOW NECESSARY REPAIRS.***

[11] Submit an application for a Coastal Development Permit to authorize after-the-fact the unpermitted development that occurred after 1976.	**Resolved.**

United States Department of the Interior

NATIONAL PARK SERVICE
Point Reyes National Seashore
Point Reyes, California 94956

D5031

March 3, 2007

Mr. Kevin Lunny
17171 Sir Francis Drake
P.O. Box 69
Inverness, CA 94937

Dear Kevin:

Paul Robinson with the United States Public Health Service (USPHS) conducted inspections of three trailer housing units at the Drakes Bay (formerly Johnson's) Oyster Company Site within Point Reyes National Seashore on February 13, 2007. Kevin McKay, Special Park Uses Coordinator, accompanied Mr. Robinson. The inspection of these employee housing units produced the following USPHS findings and recommendations.

Findings

All three units are manufactured homes. One is in fair condition. The other two are in very poor condition. Rather than catalog the numerous structural health and safety deficiencies for each home, I've compiled them into a single list below. Many of the conditions were found in multiple units, and oftentimes multiple times in one unit. I've also included photos illustrating these conditions.

Conditions observed:

1. Multiple leaks in the roofs.
2. Water stained and cracked ceiling tiles.
3. Unfinished flooring, i.e. plywood subfloor with no carpet, vinyl or other covering.
4. Rotting and water damaged wall paneling.
5. Rotting and water damaged window sills.
6. Poorly fitting windows.
7. Poorly fitting doors with malfunctioning or no latch or locking mechanism.
8. Poor skirting around the base of the trailers.
9. Debris and garbage accumulating in the crawl spaces below the trailers.
10. Deteriorating floor insulation falling off the bottom of the trailers in the crawl space.
11. Pervasive interior water damage and severely deteriorated flooring, especially in bathrooms around sinks, toilets, bathtubs, and shower stalls.

12. Poorly installed and leaking plumbing fixtures and drains.
13. Light bulb sockets without light bulbs.
14. Partially installed bathroom sinks.
15. Dilapidated kitchen and bathroom cabinetry.
16. Evidence of recent rodent activity.
17. Damaged or missing floor heat vents.
18. Severely damaged back porch perched over the lagoon.
19. Missing water heater closet door, exposing water heater to weather and physical damage.
20. Gas cook tops that were not connected or were not functioning.

Recommendations

Two of the manufactured homes were in an advanced state of disrepair and would require a great deal of work to rehabilitate them. The evidence of multiple leaks throughout these structures and severely water damaged floors, walls and ceilings, suggests a prolonged period of exposure to water. Replacing flooring, and wall and ceiling panels will not address the probable extensive structural damage to framing, etc., but will only cover it up for a time. The structural components of these two units should be inspected by someone knowledgeable (about) structural engineering to determine the severity and extent of the damage. Any work done without taking this step should be considered a temporary, short-term fix.

The blue house (Luis') was in the best condition of the three inspected. It appears to have sustained minimal interior water damage. Ceilings were not water stained. No significant rot was apparent in the walls, especially under the window sills where moisture from condensation tends to accumulate. Measures to rehab this structure should not be as extensive.

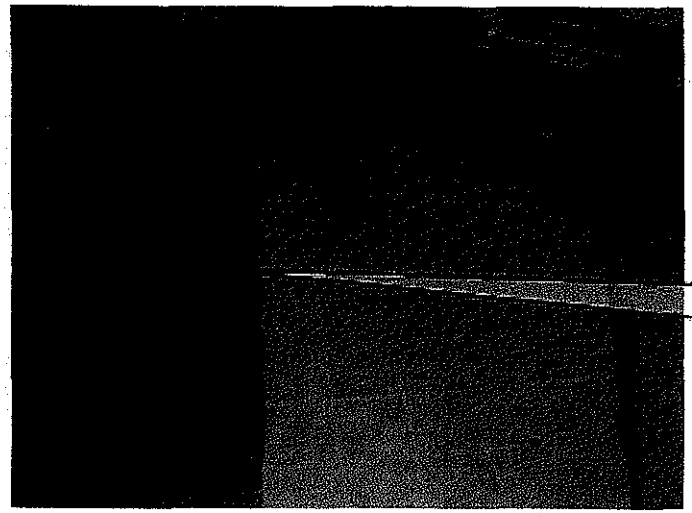
These findings and recommendations should be addressed immediately. Please notify Kevin McKay, Special Park Uses Coordinator, when the recommendations have been addressed and repairs have been completed so that a follow up inspection can be arranged with the USPHS. Kevin can be contacted at (415) 464-5111. We have enclosed the pictures that were submitted with the report.

Sincerely,

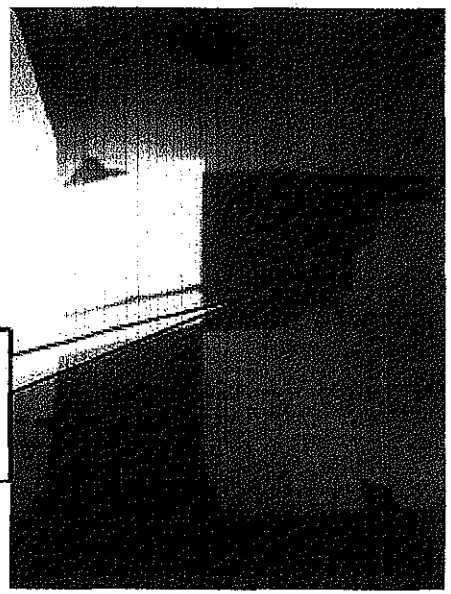
Don L. Neubacher
Superintendent

Enclosure

Leaks in the roofs with water stained and cracked ceiling tiles.



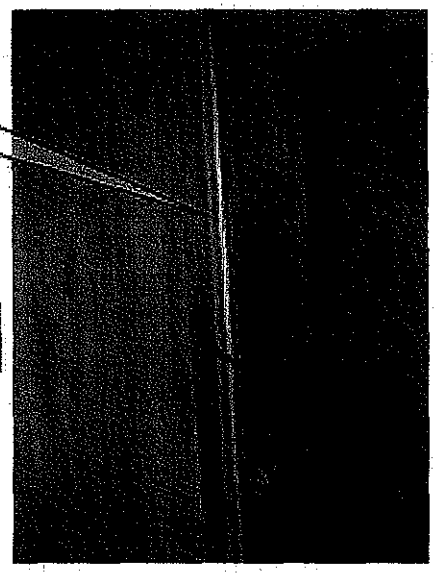
Unfinished flooring, i.e. plywood subfloor with no carpet, vinyl or other covering

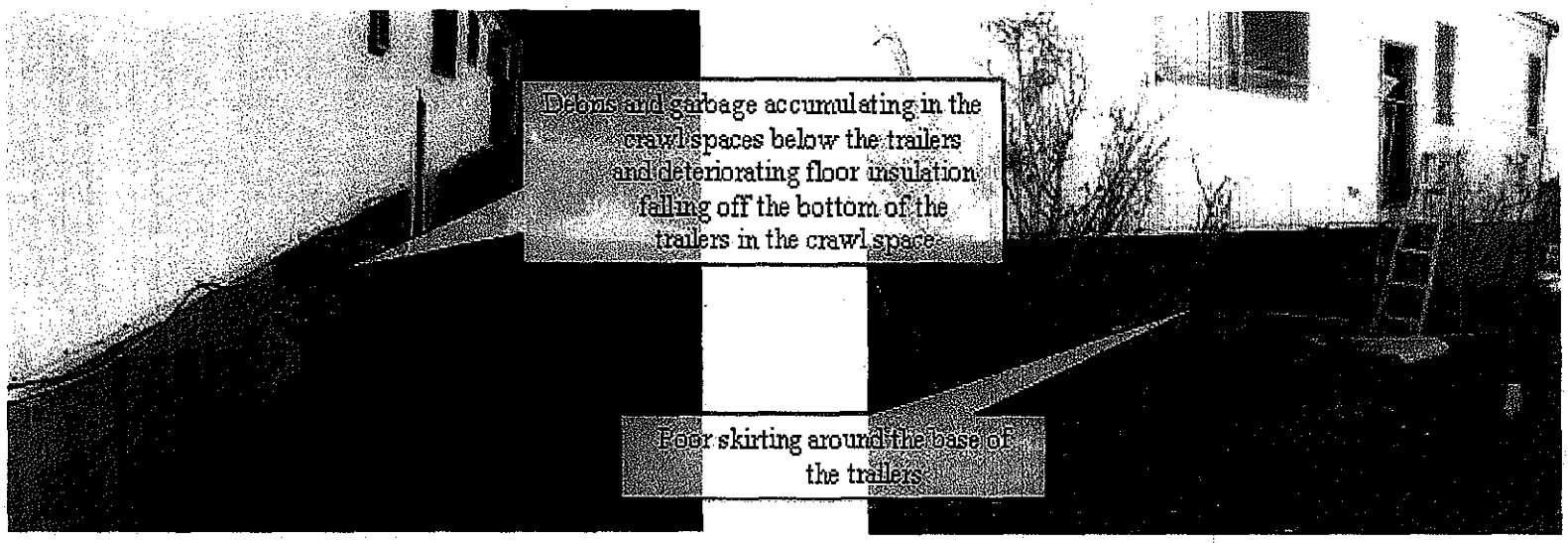


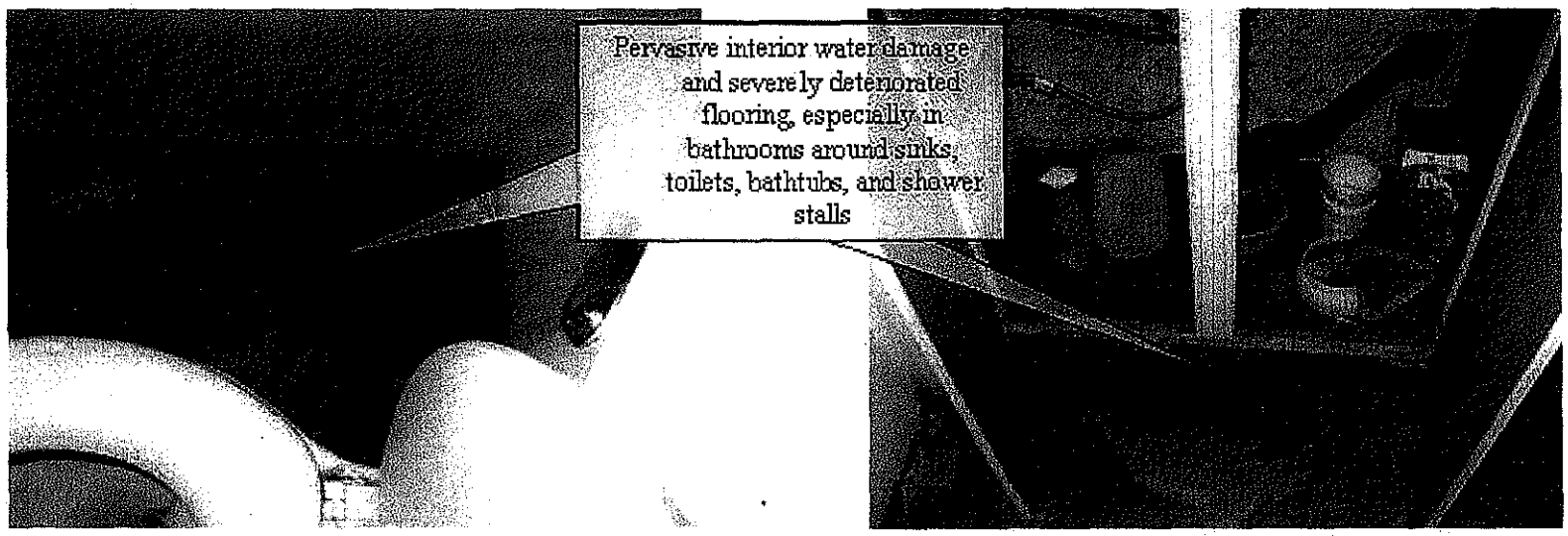
Rotting and water damaged wall paneling and window sills.

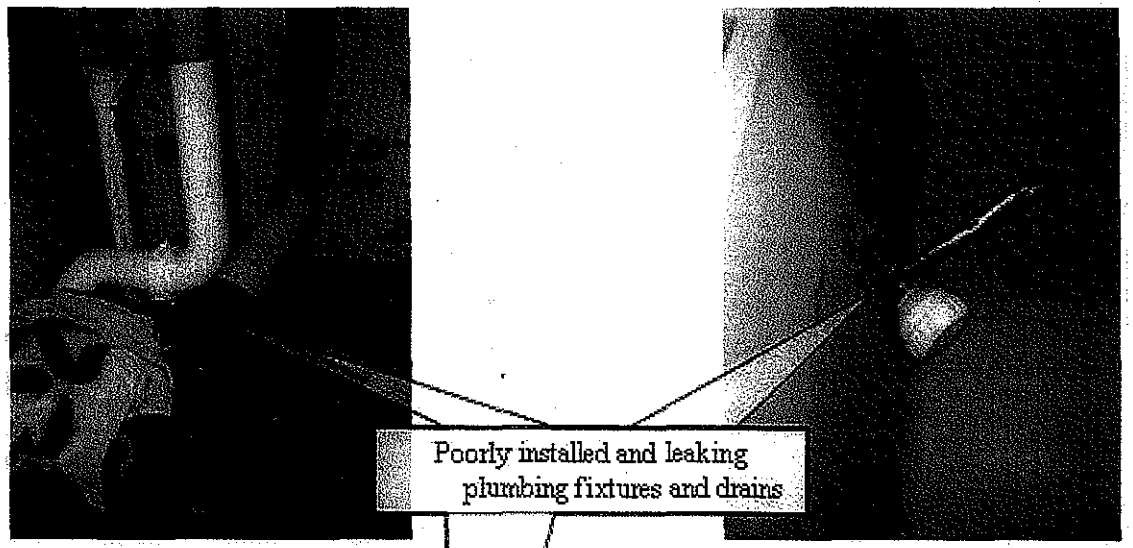
Poorly fitting doors with malfunctioning or no latch or locking mechanism.

Poorly fitting windows

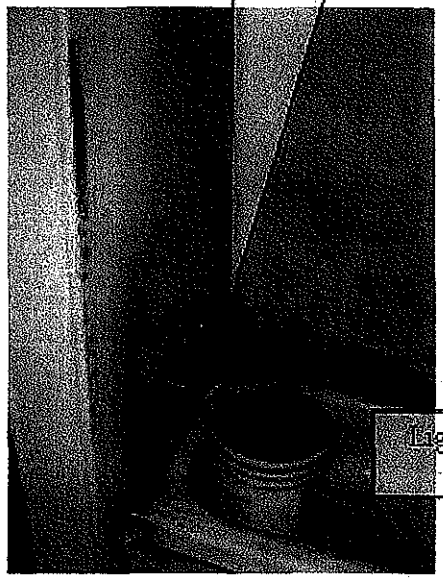


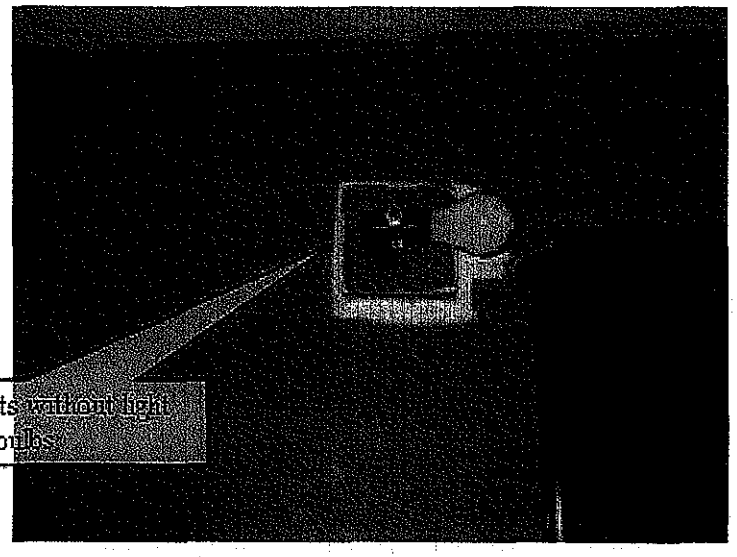

Debris and garbage accumulating in the crawlspaces below the trailers and deteriorating floor insulation falling off the bottom of the trailers in the crawlspaces
Poor skirting around the base of the trailers


Pervasive interior water damage and severely deteriorated flooring, especially in bathrooms around sinks, toilets, bathtubs, and shower stalls

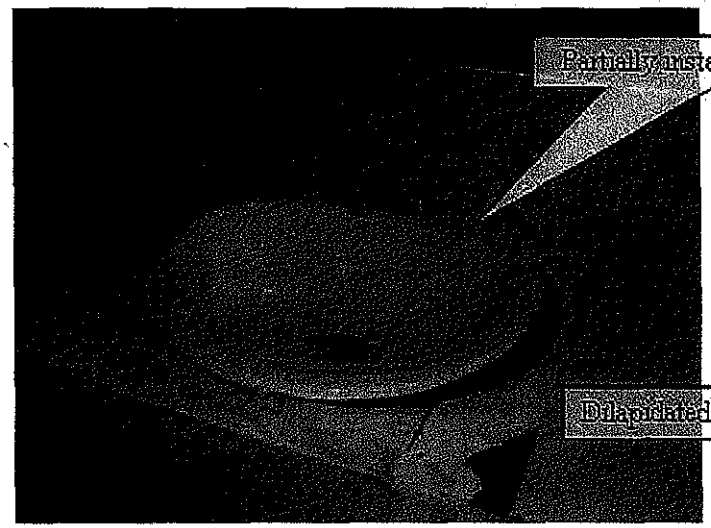


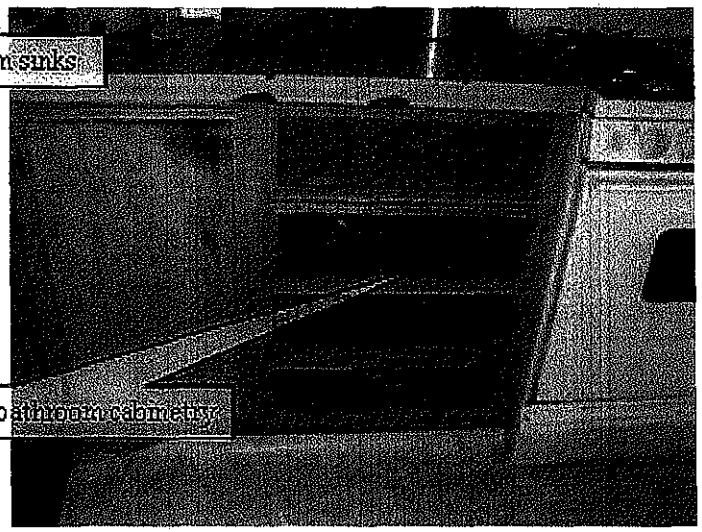
Poorly installed and leaking plumbing fixtures and drains

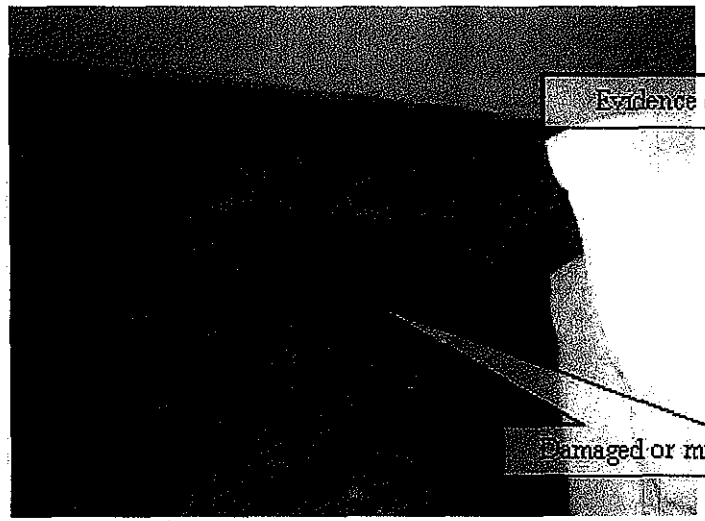


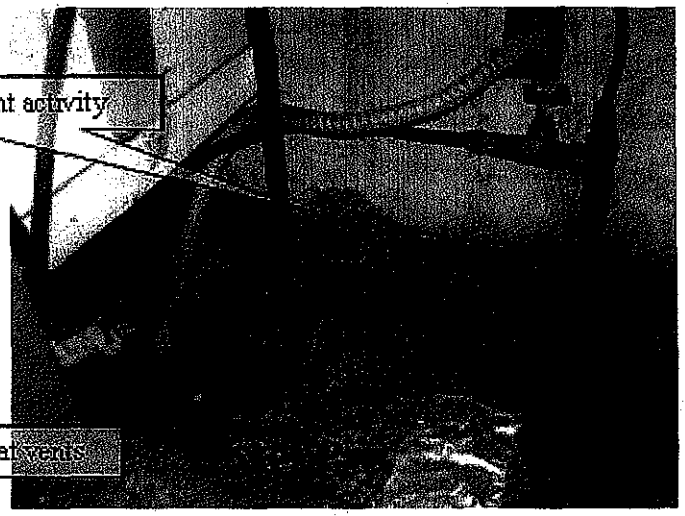


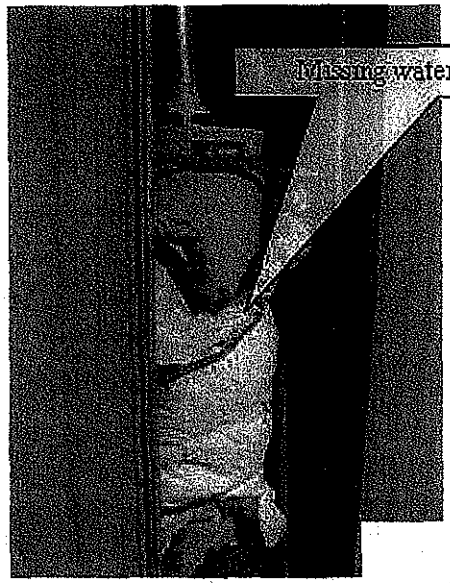
Light bulb sockets without light bulbs


Partially installed bathroom sinks

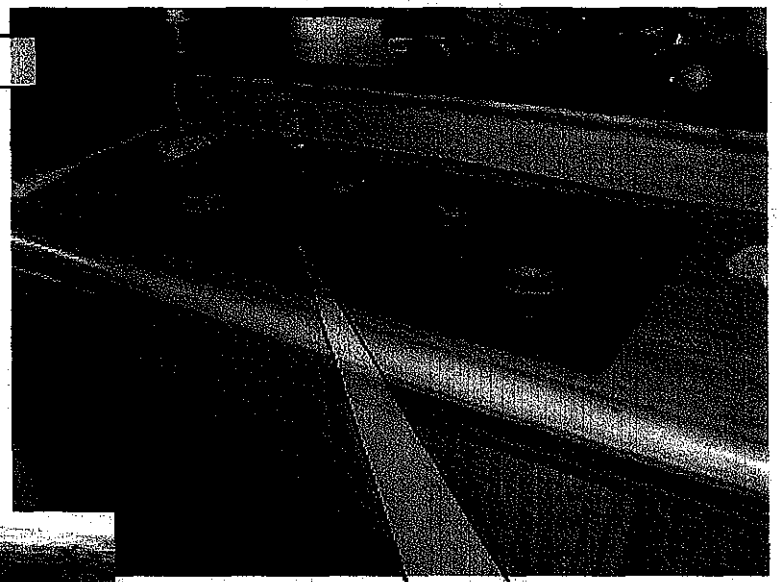

Dilapidated kitchen and bathroom cabinetry


Damaged or missing floor heat vents


Evidence of recent rodent activity



Missing water heater closet door



Gas cook tops that were not connected

Severely damaged back porch perched over the lagoon

L1425
Tract 02-106 PORE

February 12, 2007

Mr. Kevin Lunny
17300 Sir Francis Drake Blvd.
Inverness, CA 94937

Dear Kevin:

We received your letter dated January 29, 2007. We disagree with your statement that no permit is necessary from the National Park Service (NPS) to use estuary waters. We want to restate our position that a permit(s) will be required for the use of estuary waters, the well site, parking areas, and any area beyond the reserved lands.

36 Code of Federal Regulations 5.3 states: "engaging in or soliciting any business in park areas, except in accordance with the provision of a permit contract or other written agreement with the United States, except as such may be specifically authorized under special regulation applicable to a park area, is prohibited."

As we have discussed, the tide and submerged lands in the Drakes Estero were ceded to the United States in 1965 by the California legislature and approved by the Governor. The Act requires the National Park Service to use such lands for public purposes.

36 Code of Federal Regulations 1.2 states: "Applicability and Scope: a) The Regulations contained in this chapter apply to all persons entering, using, visiting or otherwise within: (1) The boundaries of federally owned lands and waters administered by the National Park Service."

We want to reiterate that no new development may occur on the site until the current issues are resolved and Drakes Bay Oyster Company obtains a permit from the National Park Service. In addition, we want to let you know we are reviewing your current site drawing and the draft special use permit for compliance purposes under the National Environmental Policy Act and other regulatory laws. The NPS review should be completed in a couple of weeks.

Sincerely,

Don L. Neubacher
Superintendent

DLNeubacher:an 02/12/07

United States Department of the Interior

NATIONAL PARK SERVICE
Point Reyes National Seashore
Point Reyes, California 94956

L1425
Tract 02-106 PORE
(X L3019)
February 6, 2007

Mr. Kevin Lunny
dba. Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

Dear Kevin:

This document will serve as a "Letter of Authorization" extending the terms and conditions contained in Special Use Permit MSC-8530-6000-2011 and the Letter of Authorization dated December 30, 2005 regarding the leach field and septic system located at the current Drakes Bay Oyster Company and former Johnson's Oyster Company Site. The Special Use Permit expired on November 30, 2006. The terms and conditions are extended for a period of one year until November 30, 2007 or until such time as a Special Use Permit addressing Drakes Bay Oyster Company operations and use of non-reserved portions of Tract 02-106 is issued, whichever occurs first. We intend to coordinate the Special Use Permits associated with the site to be issued on the same calendar schedule however, issuance of the Special Use Permits are contingent upon successful resolution of issues with the National Park Service and the Coastal Commission.

The annual fee of $368.00 that was established on December 1, 2001 has been adjusted for inflation to $419.00. This adjustment was calculated utilizing the Bureau of Labor Statistics, Consumer Price Index, inflation calculator. An annual billing schedule of $419.00 will be established.

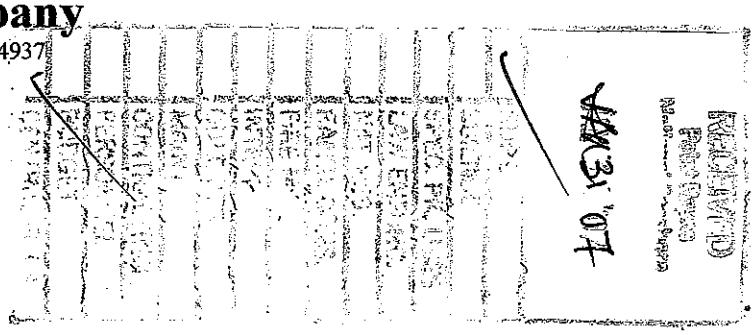
If you have questions or concerns regarding this Letter of Authorization, contact Kevin McKay, Special Park Uses Coordinator, at (415) 464-5111.

Sincerely,

Don L. Neubacher
Superintendent

KMcKay:kem 11/1/06

Drakes Bay Oyster Company
17171 Sir Francis Drake Boulevard, Inverness, CA 94937



January 29, 2007

Don Neubacher
Superintendent
Point Reyes National Seashore
Point Reyes, California 94956

Dear Mr. Neubacher,

I received your letter dated January 25, regarding our meeting on January 12 with Al Wanger, Bill Kirsch, and Lisa Bush about Drakes Bay Oyster Company's (DBOC) Coastal Development permit (CDP). The meeting was held specifically to discuss the CDP for DBOC's upgrades to the oyster farm facilities. We did also briefly discuss a special use permit (SUP) for DBOC.

I have several comments in response to three of your four summary points listed in the letter.

Regarding point number 1, the drawings have been finalized and copies have been sent to you and Al Wanger of the California Coastal Commission.

Regarding point number 2, DBOC **did not** indicate its agreement with PRNS that an SUP for submerged lands would be necessary. You stated that an SUP would need to cover the waters of Drakes Estero, a point that we have not yet agreed on. This agreement may very well be reached in the near future when we meet to discuss the SUP.

Point number 3, the land survey, was indeed discussed. We believe that the survey issue has been resolved, and that there is no need to "work around" it. The ROP boundary with the two additions that you requested, the eastern property lines and the 50' wide "unreserved" section on the northwest corner, are included on the current drawings.

We look forward to meeting with you, Al Wanger, and Bill Kirsch very soon to complete the CDP application process.

Sincerely,

Kevin Lunny

cc: Al Wanger
Lisa Bush
W.W. Kirsch

L1425
Tract 02-106 PORE

January 25, 2007

Mr. Kevin Lunny
17300 Sir Francis Drake Blvd.
Inverness, CA 94937

Dear Kevin:

We want to thank you for attending a meeting with Point Reyes National Seashore (PRNS) and Coastal Commission (CC) staff on January 12, regarding the Drakes Bay Oyster (DBO) State of California lease, its current and proposed operation, and the status of the National Park Service special use permits at Drakes Estero.

The summary points of the meeting are listed below.

1. DBO/PRNS/ CC reviewed the proposed improvements on the leased area. DBO will finalize the drawing of proposed improvements for Coastal Commission and PRNS review. The PRNS indicated these improvements would be subject to an environmental review as mandated by the National Environmental Policy Act and National Park Service (NPS) policy. Based on the level of repair versus new construction, the NPS would determine the level of review necessary.

2. DBO indicated its agreement with PRNS that a special use permit for submerged lands would be necessary because of NPS ownership of submerged lands that were ceded by the State of California to the United States.

3. The land survey was discussed and, overall, we have agreed to work around the survey issue and create a way to more forward.

4. DBO wanted a copy of the Special Use Permit that was issued in 1972. A copy is enclosed.

We appreciate your time and effort to finalize these issues. We want to reiterate that no new development may occur on the site until the current issues are resolved.

Sincerely,

Don L. Neubacher
Superintendent

Enclosure

United States Department of the Interior

NATIONAL PARK SERVICE
Point Reyes National Seashore
Point Reyes, California 94956

D5031
X L1425 02-106
January 23, 2007

Mr. Kevin Lunny
17171 Sir Francis Drake
P.O. Box 69
Inverness, CA 94937

Dear Kevin:

Paul Robinson with the United States Public Health Service has scheduled to inspect the employee housing at Drakes Bay Oyster Company on February 13, 2007. This inspection will focus on the trailers that were not included in the last inspection conducted in August of 2006 because one trailer was unoccupied at that time and the other was to be vacated with the tenants relocating to "Luis' House." General items that were noted in need of attention during the follow-up employee housing inspections conducted by Park Staff on December 20, 2006 included the following: 1) in the family occupied trailer - the flooring was in the process of being worked on, the heating method utilized should be evaluated to ensure that it is adequate, the hot water heater had a leak, GFCI electrical outlets are required near sinks or water sources, gaps around entry doors should be sealed and windows need to be evaluated for leaks and rot. 2) In the second trailer – two broken windows were noted, gaps around entry doors should be sealed, GFCI electrical outlets are required near sinks or water sources, the washing machine was leaking water inside of the trailer, the heating available was inadequate, the plumbing in the bathrooms should be evaluated and windows need to be evaluated for leaks and rot.

These are general observations and not intended to be an exhaustive list of deficiencies. A copy of the United States Public Health Service Evaluation will be provided to you after the inspection on February 13, 2007 is completed. You will be contacted in advance and informed of a scheduled time of arrival.

Please find enclosed the requested additional draft copy of a Special Use Permit for Drakes Bay Oyster Company Operations at the former Johnsons Oyster Company site within Point Reyes National Seashore. If you have questions please contact Kevin McKay, Special Park Uses Coordinator, at (415) 464-5111.

Sincerely,

Don L. Neubacher
Superintendent

Enclosure
KEMcKay:kem 1/23/07

Enclosure

cc: Al Wanger, California Coastal Commission

DLNeubacher/SBoyceCarlson:dln 06/19/07

L1425
Tract 02-106 PORE

June 19, 2007

Mr. Kevin Lunny
Drakes Bay Oyster Company
17300 Sir Francis Drake Blvd.
Inverness, CA 94937

Dear Kevin:

We have attached a letter that we recently received from California Department of Fish and Game (CDFG) for your perusal. As you know, we had been waiting for clarification about jurisdiction regarding Drakes Estero waters. As the letter states, the NPS has primary authority because the tide and submerged lands were granted to the United States in 1965.

Because of this clarification, we would like to meet with you in the near future. We propose holding a meeting at the National Park Service (NPS) Pacific West Regional Office located in Oakland at 1111 Jackson Street. Senior Pacific West Regional staff, the Department of the Interior Solicitor's Office, and California Coastal Commission (CCC) staff are all available to attend the meeting. The goal would be to work out the remaining issues regarding an interim NPS permit for both lands and waters outside of the Reservation of Use and Occupancy (Reservation) and to help you proceed to get your Coastal Development Permit from the Commission. We also need to discuss the possible need for additional environmental compliance.

Regarding the Reservation boundary, as we stated previously, we are prepared to apply the conditions in the Reservation to the area located within the Stevens survey. At this meeting we will be prepared to discuss allowing minor repairs to existing structures to occur once approval is received from the Commission and any other relevant agencies.

In order to avoid any confusion, we would like to clarify that this meeting would be separate from any meeting that may be scheduled in the future with Senator Feinstein's office and that we would like to have this meeting with the CCC in order to keep the project moving forward.

Again, a meeting at your convenience is requested. Coastal Commission staff has agreed to attend to move this project forward.

Please send some dates for our consideration.

Sincerely,

Don L. Neubacher
Superintendent

United States Department of the Interior

NATIONAL PARK SERVICE
Point Reyes National Seashore
Point Reyes, California 94956

L1425
Tract 02-106 PORE

June 16, 2006

Mr. Kevin Lunny
dba. Drakes Bay Oyster Company
17171 Sir Francis Drake
Inverness, CA 94937

Dear Kevin:

This document will serve as a "Letter of Authorization" extending the terms and conditions contained in Special Use Permit MSC-8530-6000-2010 regarding the well and water system located at the current Drakes Bay Oyster Company and former Johnson's Oyster Company Site. This Special Use Permit is set to expire on June 30, 2006. The terms and conditions are extended for a period of one year until July 1, 2007 or until such time as a Special Use Permit addressing Drakes Bay Oyster Company operations and use of non-reserved portions of Tract 02-106 is issued, whichever occurs first. We intend to coordinate the Special Use Permits associated with the site to be issued on the same calendar schedule however, issuance of the Special Use Permits are contingent upon successful resolution of issues with the National Park Service and the Coastal Commission.

The annual fee of $2,500.00 that was established on July 1, 2000 has been adjusted for inflation to $2,925.00. This adjustment was calculated utilizing the Bureau of Labor Statistics, Consumer Price Index, inflation calculator. A quarterly billing schedule of $731.25 will be established.

On another matter, we phoned last week regarding the drawings and information you submitted to the Coastal Commission as an application for a Coastal Development Permit. The Commission staff has asked for our comments and approval. As of the date of this letter, we have not received your submittal package. Please submit these drawings and the permit application to us as soon as possible.

If you have questions or concerns regarding this Letter of Authorization, contact Kevin McKay, Special Park Uses Coordinator, at (415) 464-5111. We look forward to seeing you at the Rancher's Meeting on June 19, 2006.

Sincerely,

Don L. Neubacher
Superintendent

Special Use Permit extended to 7-1-2007
PS: Need to "submit dwgs. + permit apps" to NPS.-