

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1149

April 27, 2010

Mr. John Carlson Jr.
Executive Director
California Department of Fish and Game
1416 Ninth Street, Room 1207-5
Sacramento, CA 94244

Re: Lease No. M-438-01

Dear Mr. Carlson,

Drakes Bay Oyster Company (DBOC) requests that the following native species be added to the list of approved species for cultivation on lease No. M-438-01:

1. Olympia oyster (*Ostrea conchaphila*) Olympia oysters are indigenous to Drakes Estero and currently exist in Drakes Estero.
2. Purple Hinged Rock Scallops (*Hinnites multirugosus*). Purple Hinged Rock Scallops are indigenous to Drakes Estero and currently exist in Drakes Estero. Purple Hinged Rock Scallops are already an approved cultured species in Drakes Estero on lease No. M-438-02 which is located within M-438-01.

Currently, Pacific oysters (*C. gigas*), European Flat oysters (*Ostrea edulis*) and Manila clams (*Venerupis phippinarum*) are approved for cultivation on M-438-01. The net effect of this request will be to add two native species of bivalve shellfish to lease M-438-01.

No new culture methods will be required to grow these additional shellfish species and all seed stock will be certified by CDFG before planting. To produce seed, DBOC will obtain CDFG broodstock collection permits for both Olympia oysters and Purple Hinged Rock Scallops. This broodstock, once approved by CDFG, will be spawned on-farm and larvae collected for seed production. All seed produced at the DBOC hatchery will be used only on M-438-01.

Currently, DBOC produces mostly Pacific oysters. These requested species will allow DBOC to diversify its operation by producing traditional, indigenous shellfish. Although there is significant local demand, these native shellfish species are not grown commercially in California.

The addition of these species to Lease No. M-438-01 will not constitute an expansion of use. These species will be grown using the same historic Drakes Estero shellfish beds. The Olympia oysters and Rock Scallops will displace Pacific oysters, not add to the overall production. Actually, both of the requested traditional shellfish take 2-3 times longer than the fast growing non-native Pacific oysters to reach harvest size. Therefore, adding these native species to M-438-01 will likely reduce the overall production of shellfish in Drakes Estero.

Sincerely,

Kevin Lunny
Drakes Bay Oyster Company

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard
Inverness, CA 94937
(415) 669-1149

May 10, 2010

Mr. John Carlson Jr.
Executive Director
California Department of Fish and Game
1416 Ninth Street, Room 1207-5
Sacramento, CA 94244

Re: Lease No. M-438-01 – Boundary Revision

Dear Mr. Carlson,

Five oyster racks, reportedly built in the 1950s, are outside the boundary line of Lease No. M-438-01. These five racks have been used for oyster culture since they were constructed and are currently still in use. The five racks are important to DBOC and Reese Water and Land Surveying Services proposes a solution that would allow their continued use.

While the rack area (portions of Bed 6) will need to be added to the current lease, an equal area will be removed from the lease so that the total acreage will remain the same. Portions of Drakes Estero are currently used by harbor seals. The lease includes areas near the main channel seal haul outs - where harbor seals haul out to rest, give birth and nurse their young. The edge of the main channel is used by the harbor seals because of the adjacent deep water. The surveyor's proposal includes removing portions of the lease near the main channel to allow for a harbor seal buffer zone of 500 to 1000 feet, significantly larger than the 300' required by the Marine Mammal Act.

Drakes Bay Oyster Company (DBOC) requests that the revised lease boundary lines be approved so that the historic oyster racks can remain in use as they have for roughly 50 years and the lease line can be moved away from the seal haul out area along the main channel.

Sincerely,

Kevin Lunny
Drakes Bay Oyster Company

Enclosures:
Survey Report
Survey Map

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard

Inverness, CA 94937

(415) 669-1149

kevin@drakesbayoyster.com

nancy@drakesbayoyster.com

July 22, 2010

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

Dear Cicely,

We were surprised to receive a copy of a letter from your office, dated June 28, 2010, to John McCamman, Director, California Department of Fish and Game (CDFG), regarding our mariculture leases with the State of California. We wish we could have responded sooner, but we did not receive a copy of the letter until July 15, 2010, two weeks after-the-fact.

1. DBOC submitted its request to the California Department of Fish & Game first, per the terms of the Special Use Permit approved by the National Park Service in 2008

At the outset, we want to respond to the concern voiced in your letter that DBOC should have submitted its requests to modify the boundaries of its lease and to alter mariculture use in Lease No. M-438-01 to include Olympia oysters and purple-hinged rock scallops to the National Park Service (NPS) first before contacting CDFG. The process outlined in your letter is contrary to the process outlined in the Special Use Permit (SUP) that NPS issued in 2008. Section 4(b)(vi) of the SUP 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.

This provision clearly spells out a procedure, followed by DBOC in this instance, for DBOC to first seek to modify leases with CDFG and then once any modification is approved by CDFG, to seek approval by NPS. This process makes good sense because CDFG has special expertise with

mariculture activities, an expertise NPS lacks. The correct process is outlined in the SUP, and we followed it.

Given the above, the suggestion in your letter that NPS should "make a determination" about our proposed modifications to the lease before any consideration by CDFG is inappropriate. The process your letter suggests violates the express terms of the SUP that your office approved. Not only that, but the added delay will impose significant costs on DBOC.

2. DBOC's request does not involve an expansion of use

Our request to address the lease boundary corrects an error that was made many decades ago when a prior survey inadvertently excluded portions of Bed 6 that were already under cultivation from the lease area. The oyster racks in this area have been in production since at least the 1950s. We are proposing to correct the lease boundary to include this area and to remove an equal amount of area from the lease in the vicinity of where the harbor seals haul out. The net effect is to increase the buffer zone for harbor seals from 300 feet as recommended by the Marine Mammal Act to 500 to 1000 feet. The boundary change would not result in any expansion of use.

We have also requested authorization from CDFG to cultivate Olympia oysters and Purple Hinged Rock Scallops within Lease No. M-438-01. Both species are indigenous to Drakes Estero and can be found today under natural conditions. In fact, Purple Hinged Rock Scallops are already authorized for cultivation within Lease No. M-438-02. No new culture methods will be required to cultivate Olympia oysters or Rock Scallops. Nor will there be any expansion in production, as the Olympia oysters and Rock Scallops will displace Pacific oysters currently under cultivation.

We are particularly excited by the prospect of cultivating Olympia oysters. Olympia oysters are the only native oysters on the Pacific coast. If given approval, DBOC will operate the only hatchery of Olympia oysters in California.

We note that your letter seeks to improve communication and coordination with CDFG about the leases in Drake's Estero. We trust you wish to improve communication and coordination with DBOC as well. During your recent visit to the Estero on July 14, 2010, we felt as if progress had been made in that regard. Indeed, during your visit we discussed the requests we had submitted to CDFG. You can therefore understand why we found your letter disappointing, given that it mischaracterizes the facts and disregards the process the SUP so very clearly spells out. We respectfully request that you withdraw your letter to John McCamman.

Sincerely,

Kevin Lunny

Nancy Lunny



State of California - The Natural Resources Agency
 DEPARTMENT OF FISH AND GAME
 1416 9th Street, 12th Floor
 Sacramento, CA 95814
<http://www.dfg.ca.gov>

ARNOLD SCHWARZENEGGER, Governor
 JOHN McCAMMAN, Director



RECEIVED
Point Reyes National Seashore
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<input checked="" type="checkbox"/> SUPT.
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August 11, 2010

Cicely A. Muldoon, Acting Superintendent
 National Park Service
 Point Reyes National Seashore
 Point Reyes Station, California 94956

Subject: Drakes Bay Oyster Company (L1425)

Dear Superintendent Muldoon:

Thank you for your letter (L1425) regarding Drakes Bay Oyster Company (DBOC). The Department of Fish and Game (Department) concurs that close coordination with the National Park Service (NPS) is necessary for leases within Drakes Estero.

The DBOC requests two amendments to their state water bottom lease M-488-01: the addition of two native species and a modification of lease boundaries with no net change in acreage. DBOC requests the addition of purple-hinged rock scallops and Olympia oyster. Purple-hinged rock scallops are native and are permitted on an adjacent lease. Olympia oysters are native and present in Drakes Estero through natural settlement. The lease amendment requests would result in no net change in acreage and an increase in the harbor seal buffer zone to 500'-1,000'. These lease modifications are under consideration; however, the Department has not made any decisions nor taken any recommendations to the Commission.

The Commission maintains its authority over state water bottom leases and the Department is responsible for oversight of operations conducted under those leases. The DBOC must ensure their operations are consistent with all permits required for operation, including their NPS special use permit.

Coordination between the NPS and the Department is important. The Department will provide the specific requests and Ms. Heather McIntire will be contacting you to schedule a meeting. If you have any questions, please contact Ms McIntire at (916) 539-2028 or hmcintire@dfg.ca.gov.

Sincerely,

Sonke Mastrup
 Deputy Director
 Wildlife and Fisheries Division

Cecily A. Muldoon
August 11, 2010
Page 2 of 2

cc: California Department of Fish and Game

Marine Region
Mr. Thomas Barnes
Ms. Kirsten Ramey

Fisheries Branch
Ms. Heather McIntire



United States Department of the Interior

NATIONAL PARK SERVICE

Point Reyes National Seashore
Point Reyes, California 94956

IN REPLY REFER TO:

L1425

October 15, 2010

Jim McCamman, Director
California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, California 95814

Dear Director McCamman:

We very much appreciate the open communication we have enjoyed with your staff regarding the proposed alterations to the leases that have been issued by CDFG to Drakes Bay Oyster Company (DBOC) within Drakes Estero. Our meeting with Heather McIntire on September 16 was extremely productive, and we look forward to working closely with Heather and Kirsten Ramey in the future. We feel it important that all agencies with a role in Drakes Estero better coordinate actions to avoid confusion to both DBOC and the public.

Our understanding is that DBOC is currently seeking two amendments to its leases. These amendments are: 1. addition of two additional species to a lease, and, 2. a change to the current CDFG lease boundaries. Because each of these proposed amendments has the potential to alter the physical environment within the Estero, the NPS cannot authorize these actions without first completing a detailed analysis in accordance with National Environmental Policy Act (NEPA). At this point in the planning process, we are unable to undertake such an analysis because our approach will be first to complete a separate environmental process that has recently been initiated and that is described below.

The NPS has begun an Environmental Impact Statement (EIS) process to analyze whether or not to issue a 10 year Special Use Permit (permit) to DBOC following the expiration of DBOC's Reservation of Use and Occupancy in 2012. The EIS process is a large undertaking and will be our primary focus in regards to DBOC and Drakes Estero. The EIS will evaluate a range of alternatives and will be used to inform the Secretary of the Interior's decision on whether or not to issue a new permit. The process will provide opportunities for coordination with CDFG and other agencies, as well as opportunities for broad public engagement on an issue which has, to date, been controversial. Our goal is to have this EIS completed by July of 2012.

We welcome your participation in this process, and under separate cover have sent a letter inviting the CDFG to become a cooperating agency in the EIS. I am happy to meet with you and your staff to discuss these issues at any time.

Sincerely,

Cicely A. Muldoon
Superintendent

Cc: Heather McIntire, CDFG
Cassidy Teufel, CCC
Kevin and Nancy Lunny, DBOC



United States Department of the Interior

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

IN REPLY REFER TO
L1425

June 28, 2010

7/7/10 See att'd note from Gordon White

Jim McCamman, Director
California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, California 95814

Dear Director McCamman:

It has come to our attention that the Drakes Bay Oyster Company (DBOC) has proposed alterations to their leases within Drakes Estero. This includes expansion of mariculture use in Drakes Estero Lease No. M-438-01 (the "lease") to include the cultivation of Olympia oysters (*Ostrea concaphila*), and purple-hinged rock scallops (*Crassadoma gigantean*), and a request for a collecting permit for these two species within Drakes Estero. In addition, we understand that DBOC has requested to modify the boundaries of their existing lease. We are concerned that these requests have not also been made to NPS, whose authorization would be needed to implement any of these proposed expansions. To date, no specific information or maps regarding these proposed alterations has been provided to the National Park Service (NPS). The NPS requests that, prior to consideration of these proposals by the CDFG, the NPS be allowed to make a determination regarding whether the NPS would authorize this expansion of DBOC's activities. We would also welcome the opportunity to discuss with you and your staff ways in which we can improve communication and coordination of our consideration of these issues.

In his letter of May 15, 2007 to the NPS, CDFG Director L. Ryan Broddrick wrote the following, regarding the oyster operation in Drakes Estero:

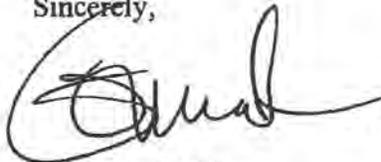
"The 2004 lease renewal is expressly contingent upon the aquaculture facility's compliance with the 1972 grant reservation and, after its expiration, with any special use permit that PRNS may issue in its discretion. The reservation requires compliance with all applicable health and safety laws and, 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."

The DBOC currently operates under a National Park Service Special Use Permit (SUP) signed in April 2008. Under the terms of the SUP, the DBOC "will not introduce species of shellfish

beyond those described in the existing leases..." Any modifications to the existing CDFG leases may not be implemented without the prior written approval the NPS. We are also concerned with new information that the DBOC is requesting to alter the boundary of the shellfish growing leases in Drakes Estero. The SUP boundaries are drawn to match the boundaries of the CDFG lease areas. This request has not been submitted to the NPS, and we are concerned that any CDFG recommendation or action on this proposal would make the CDFG lease areas inconsistent with the SUP.

As the new Superintendent at Point Reyes, I would like to work with you and your staff to improve communications and develop an effective process to evaluate proposed modifications related to the leases within Drakes Estero. I am happy to meet with you and your staff at your earliest convenience to discuss these issues. In the meantime, the NPS respectfully requests that you postpone any consideration of these proposals until we have had a chance to make a determination regarding the proposed modifications.

Sincerely,



ACTING

Cicely A. Muldoon
Superintendent

Cc: Kirsten Ramey, CDFG
Cassidy Teufel, CCC
Kevin Lunny, DBOC

MODE = MEMORY TRANSMISSION

START=JUL-07 13:22

END=JUL-07 13:22

FILE NO. = 070

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Point Reyes
National Seashore

1 Bear Valley Road
Point Reyes Station, CA
94956

415-464-5100 phone
415-663-8132 fax
Administration Office

Point Reyes National Seashore Fax

To: Jim McCamman
 Fax number: 916 653 7387
 From: Cicely Muldoon, Sup't.
 Date: 7-7-10
 Pages to follow: 2
 Subject: Drakes Bay Oyster Co lease
 expansion request.

7/12/10 NOTE

I mistakenly sent letter out with incorrect date. Letter was finalized and sent on July 7 2010.

Gordon

GORDON WHITE
POINT REYES NAT SEASHORE



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National Seashore

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94956

415-464-5100 phone
415-663-8132 fax
Administration Office

Point Reyes National Seashore Fax

To: Jim McCamman 9166537387
Fax number: 916 653 7387
From: Cicely Muldoon, Sup't.
Date: 7.7.10
Pages to follow: 2
Subject: Drakes Bay Oyster Co lease
expansion request.

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