



APPENDIXES

A

EXISTING NPS AUTHORIZATIONS

- Special Use Permit
- Reservation of Use and Occupancy

SPECIAL USE PERMIT

Form 10-114
Rev. Jan. 00

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UNITED STATES DEPARTMENT OF THE INTERIOR National Park Service Special Use Permit

Name of Use: Aquaculture

Date Permit Reviewed 2008
Reviewed 20
Reviewed 20
Expires November 30, 2012

Long Term X
Short Term

Permit # MISC-8530-6000-8002

Type Park Code No. #

Point Reyes National Seashore

Drakes Bay Oyster Company
17171 Sir Francis Drake Blvd.
Inverness, CA 94937
(415) 669-1149

is hereby authorized for a period ("Term") commencing on April, 2008 ("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:

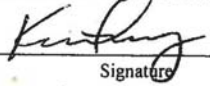
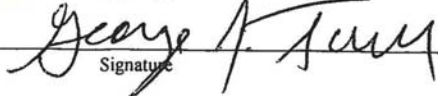
Use of the area designated as the "SUP Area" on the map attached hereto as Exhibit B for the purpose of processing shellfish, the interpretation of shellfish cultivation to the visiting public, and residential purposes reasonably incidental thereto. Use of the area designated as the "SUP Area" on the 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:		<u>Drakes Bay Oyster Co.</u>	<u>4/22/08</u>
	Signature	Organization	Date
Authorizing Official:		<u>George Turnbull</u>	<u>4/22/08</u>
	Signature	Deputy Regional Director	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) 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

- 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.
- b) 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) 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.
 - 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 Permittee determines that the 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.

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 SUPPRESSION

- 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.

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- b) If approval of activities referenced above in Section 10(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 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) 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. Permittee 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 Permittee 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 Permittee 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 Permittee. 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 Permittee, in its sole discretion, will review and specify the type and level of insurance coverage which shall be required. The Permittee 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 Permittee, in Permittee'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) INDEMNITY

- a) In addition to the indemnification contained in Article 14, Permittee shall indemnify, defend, save and hold Permittee, its employees, successors, agents and assigns, harmless from and against, and reimburse Permittee 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 Permittee), 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) Permittee 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 Permittee. 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) Permittee 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 Permittee 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 Permittee 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 Permittee, 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 Permittee's sole option, after notice to Permittee, Permittee's Personal Property, shall either become the property of the Permittee without compensation therefore, or the Permittee may cause it to be removed and the Premises to be repaired at the expense of Permittee, and no claim for damages against Permittee, 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 Permittee 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 Permittee and no other party. No review, comment, approval or inspection, right or exercise of any right to perform Permittee's obligations, or similar action required or permitted by, of, or to Permittee under this Permit, or actions or omissions of Permittee's employees, contractors, or other agents, or other circumstances shall give or be deemed to give Permittee 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 waiver 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 Permittee or of any interest of the Permittee in the Premises. If any such lien shall at anytime be filed against the Premises or any portion thereof, Permittee shall cause the Permittee 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 Permittee:

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) Permittee 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. Permittee shall not under any circumstances be responsible or obligated for any losses or liabilities of Permittee.

30) ANTI-DEFICIENCY ACT

- a) Permittee and Permittee agree that nothing contained in this Permit shall be construed as binding Permittee 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 Permittee 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 Permittee 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 Permittee and Permittee.

33) NO PAYMENTS BY PERMITTEE

- a) Under no circumstances or conditions, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall Permittee 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

Page 14

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

- XHIBIT A: Map – Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area
- XHIBIT B: Map – Drake's Estero Oysters – SUP & ROP
- XHIBIT C: Drakes Estero Aquaculture and Harbor Seal Protection Protocol
- XHIBIT D: Map – Drakes Bay Oyster Company Well Area
- XHIBIT E: Map – Drakes Bay Oyster Company Sewage Area

EXHIBIT A

Map – Drake's Estero Aquaculture & CDFG Leases: NPS Resources and SUP Area

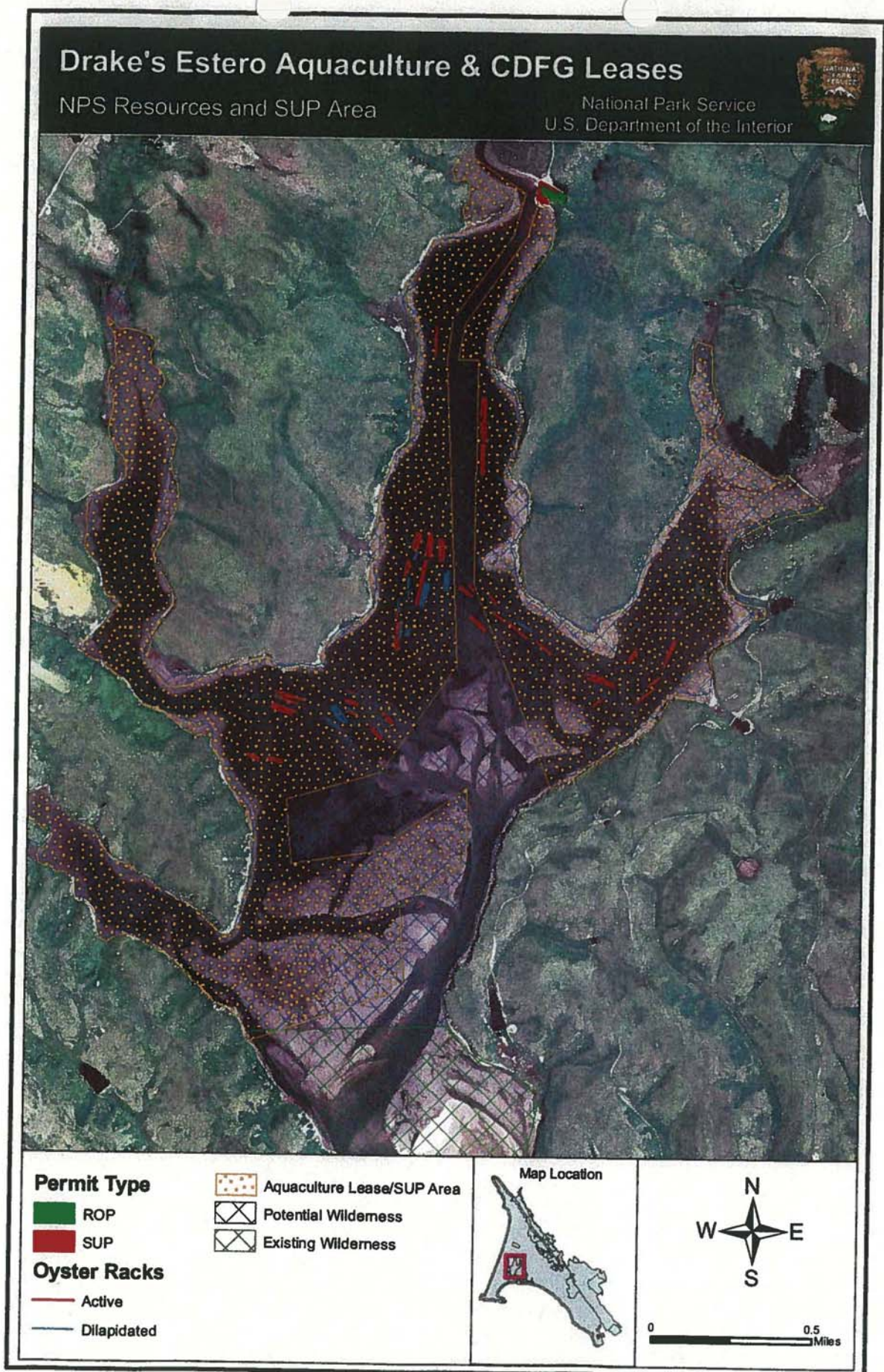


EXHIBIT B

Map – Drake's Estero Oysters – SUP & ROP

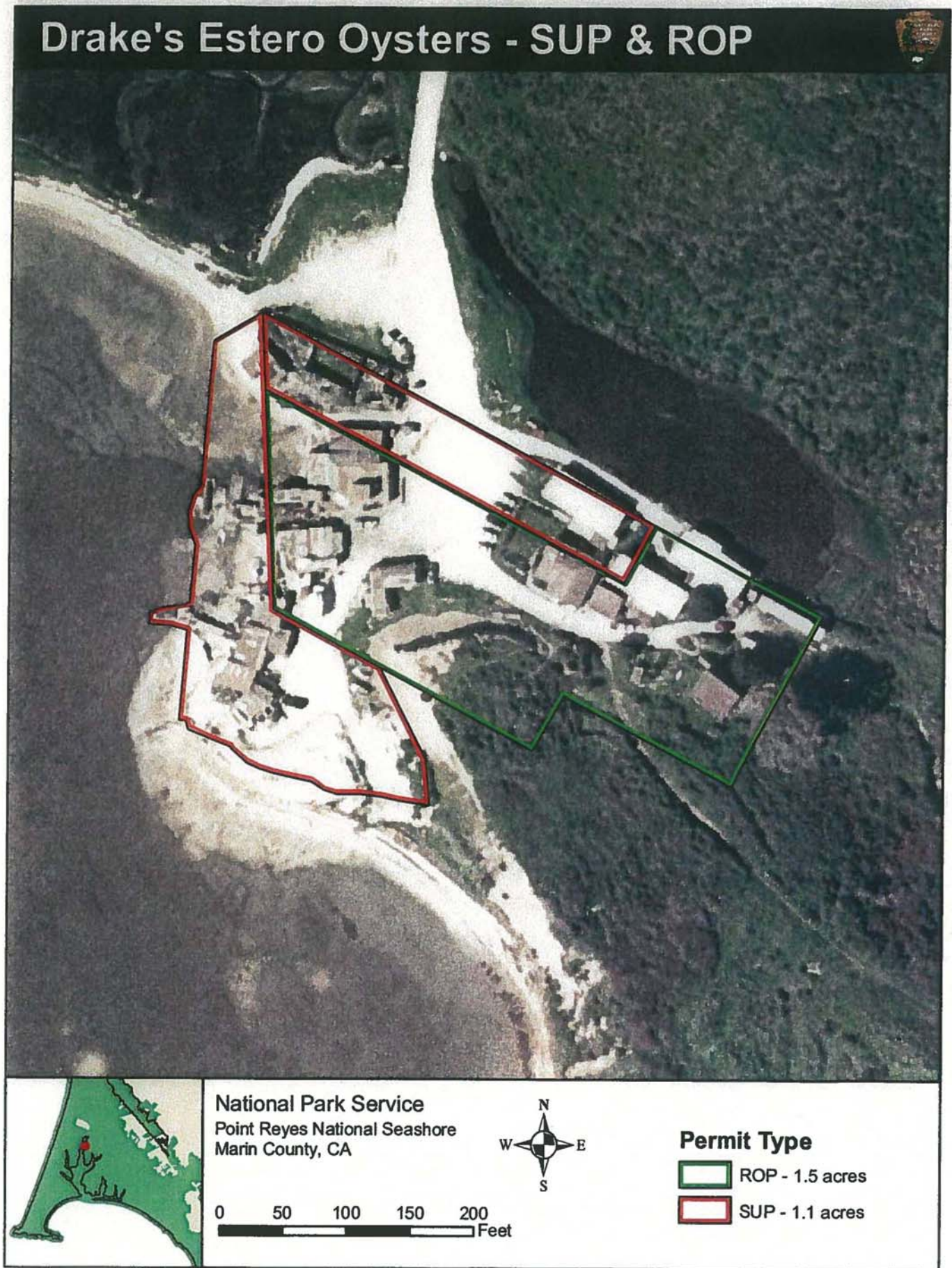
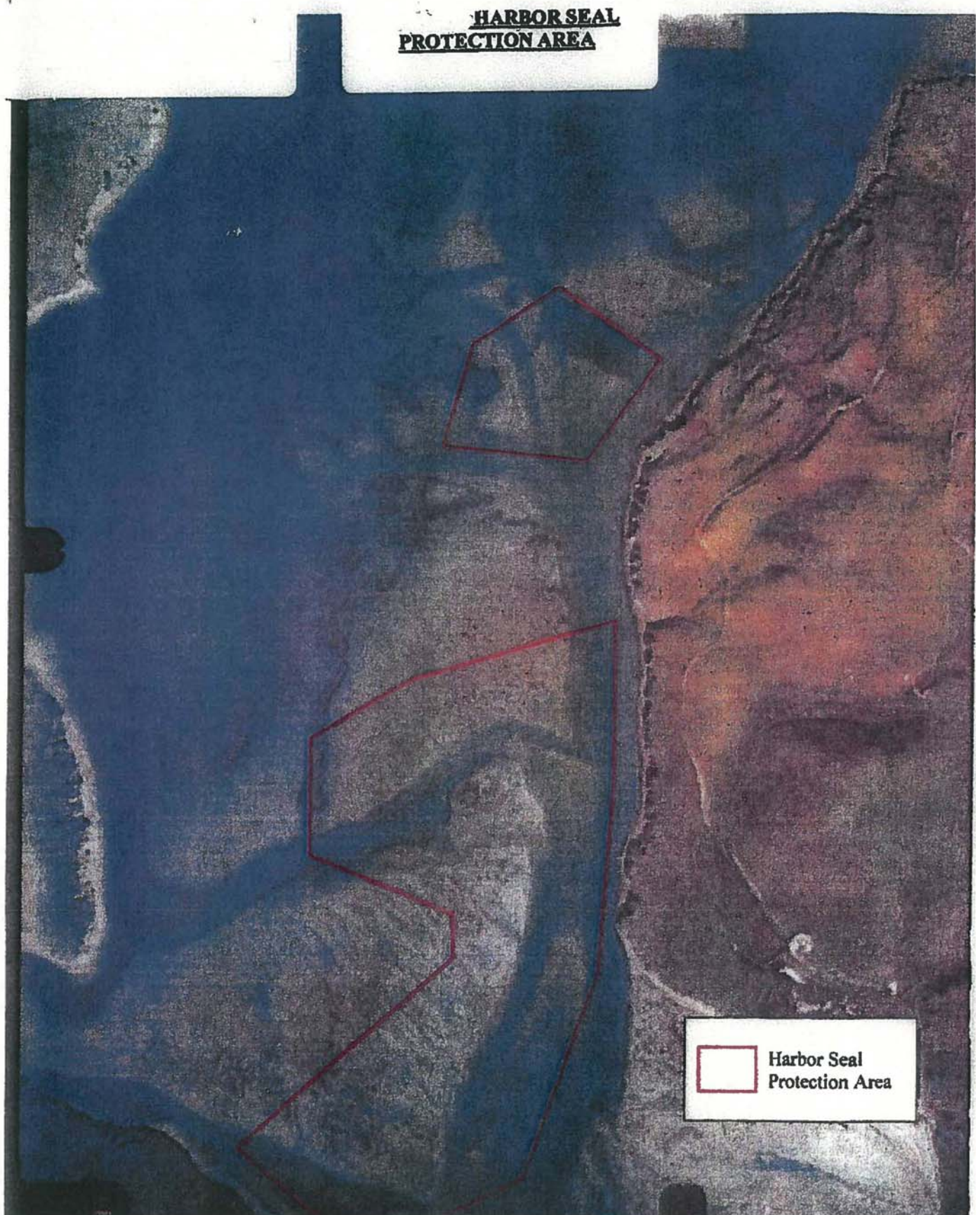


EXHIBIT C

Drakes Estero Aquaculture and Harbor Seal Protection Protocol



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

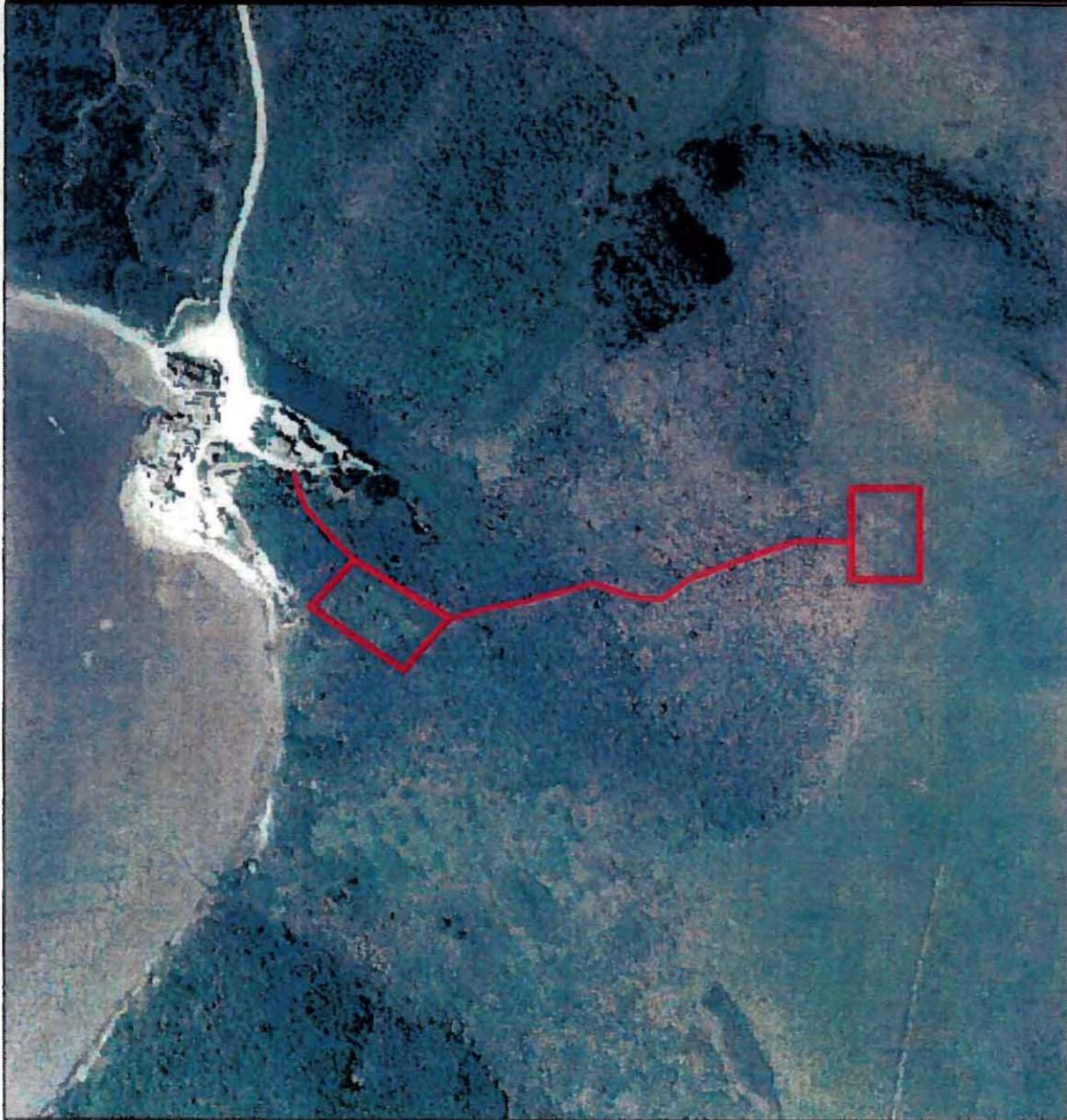
Map – Drakes Bay Oyster Company Well Area

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



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RESERVATION OF USE AND OCCUPANCY



IN REPLY REFER TO:

LI425(WR)ML
 PORE
 Tr. 02-106
 Johnson Oyster Co.

December 19, 1973

Memorandum

To: Associate Director, Park System Management
 From: Regional Director, Western Region
 Subject: Transmittal of Deed Assembly

Vendor: Johnson Oyster Company
 Tract No.: 02-106
 Area: Point Reyes National Seashore
 Deed No.:

The original documents for the subject acquisition are transmitted herewith as follows:

- (x) 1. Recorded Instrument of Conveyance
 - (x) 2. Attorney General's Final Title Opinion
 - (x) 3. Title Evidence
 - () 4. Administrative Waiver Certificate
 - (x) 5. Certificate of Inspection and Possession
 - () 6. Articles of Incorporation
 - () 7. Resolution
 - (x) 8. Other Documents
- Vendor's (Seller's) Certificate of Possession (1)
 Tenant's Certificate of Possession (6)
 Disclaimers (6)
Terms of reservation contained in contract no. CX800032073

(Sgd) Howard H. Chapman

Enclosures

cc:
 Superintendent, Point Reyes, NS,
 w/cy Deed and Final Title Opinion

RECEIVED

Point Reyes
National Seashore

DEC 21 1973

<input checked="" type="checkbox"/>	SUPT.
<input checked="" type="checkbox"/>	ADM. OFF.
<input type="checkbox"/>	MAINTENANCE
<input type="checkbox"/>	INTERPRETATION
<input type="checkbox"/>	RES. BIOLOGIST
<input type="checkbox"/>	PROTECTION
<input type="checkbox"/>	HORSE FARM
<input type="checkbox"/>	SAFETY
<input checked="" type="checkbox"/>	FILES

RECORDED AT REQUEST OF
MARIN TITLE GUARANTY CO.

97555 C

16827

After recording, return to:

NATIONAL PARK SERVICE

WESTERN REGION, DIVISION OF LANDS

450 Golden Gate Avenue, Box 36063

San Francisco, California 94102 Official Records of Marin County, Calif.

AT 30 MIN. PAST 12 P. M.

NOV 30 1972

POINT REYES NATIONAL SEASHORE
Tract 02-106

109-130-03

46827

FEE \$ 5.00 RECORDER

GRANT DEED

BOOK 2634 PAGE 641

JOHNSON OYSTER COMPANY, a California corporation, GRANTOR, pursuant to a Resolution of the Grantor's Board of Directors September 2, 1972, in consideration of SEVENTY NINE THOUSAND TWO HUNDRED (\$79,200.00) DOLLARS, to it in hand paid, receipt of which is hereby acknowledged, does hereby grant and convey to the UNITED STATES OF AMERICA, and its assigns, GRANTEE, the following described property located in the County of Marin, State of California:

EXHIBIT "A" attached hereto and made a part hereof

TOGETHER WITH all buildings and improvements thereon and all water rights appurtenant thereto and all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

The land is conveyed subject to existing easements of record for public roads and highways, public utilities, railroads, ditches and canals.

The land hereinabove conveyed contains 5 acres, more or less, and is being acquired by the Department of the Interior, National Park Service.

THE GRANTOR RESERVES only the following rights and interests in the hereinabove described property: a reservation of use and occupancy for a period of forty (40) years in accordance with the terms of the Offer to Sell Real Property, assigned Contract No. CX800032073, signed by the GRANTOR on October 13, 1972, accepted on October 16, 1972, and on file with the National Park Service.

TO HAVE AND TO HOLD the same unto said UNITED STATES OF AMERICA and its assigns, forever.

THE GRANTOR further remises, releases, and forever quitclaims to the UNITED STATES OF AMERICA and its assigns, all right, title, and interest which the GRANTOR may have in the banks, beds, and waters of any streams bordering the land conveyed and also all interest in and to any alleys, roads, streets, ways, strips, gores or railroad rights-of-way abutting or adjoining the land conveyed and in any means of ingress or egress appurtenant thereto.

IN WITNESS WHEREOF, Johnson Oyster Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officer, this 9th day of November, 1972.

JOHNSON OYSTER COMPANY

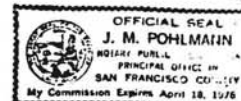
DOCUMENTARY TRANSFER TAX \$ <u>none</u>
— Computed on full value of property conveyed,
— OR Computed on full value less liens and encumbrances remaining at time of sale.
Signature of Declarant or Agent determining tax. <u>Albert J. Janner</u>
Firm Name <u>Marin Title Guaranty Co.</u>

By Charles W. Johnson
Charles W. Johnson, President.By Milton T. Simmons
Milton T. Simmons, Secretary-Treasurer

ACKNOWLEDGMENT

STATE of California
County of San Francisco

ss.



On this 9 day of November in the year 1972, before me, John M. Pohlmann, a Notary Public of said State, duly commissioned and sworn, personally appeared Charles W. Johnson & Milton T. Simmons and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My commission expires:
April 18, 1976By J. M. Pohlmann
Notary Public in and for said State

BOOK 2634 PAGE

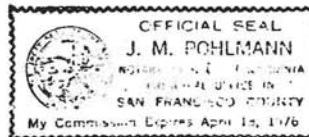
STATE OF CALIFORNIA, County of MONTE

On November 9, 1972
before me, the undersigned, a Notary Public, in and for said County
and State, personally appeared Charles W. Johnson
and Milton Simpson

known to me to be the ~~Vice~~ President and Secretary
Treasurer of the corporation that
executed the within instrument, and also known to me to be the
persons who executed it on behalf of such corporation and acknowl-
edged to me that such corporation executed the same.



Notary Public



Form 14

BOOK 2034 PAGE 642

PARCEL ONE:

BEGINNING at a point which bears South 43° 25' 25" West 4667.148 feet from the most Easterly corner of that certain parcel of land conveyed by James and Margaret McClure to R.C.S. Communications, Inc. by Deed dated September 28, 1929 and recorded October 15, 1929 in Liber 185 of Official Records, at page 93, Marin County Records; and running thence South 60° 09' East 938.6 feet, South 2° 09' East 238.01 feet, North 60° 09' West 938.6 feet and North 2° 09' West 238.01 feet to the point of beginning

PARCEL TWO:

A RIGHT OF WAY for roadway purposes over a strip of land 14 feet in width, the center line of which is described as follows: BEING that certain property in the County of Marin, State of California, more particularly described as follows: BEGINNING at a point on the Northeasterly boundary line of that certain tract of land conveyed from Edward H. Heims et ux to Larry Jensen et ux, by Deed dated February 2, 1951, distant on said line South 60° 09' East 198.25 feet from the most Northerly corner of said tract; and running thence North 42° 47' West 171.66 feet, North 21° 12' West 107.84 feet, North 4° 48' West 105.70 feet, North 25° 45' East 168.34 feet, North 11° 06' East 96.79 feet, North 6° 29' West 224.11 feet, North 13° 57' West 110.34 feet, North 01° 18' West 91.41 feet, North 22° 51' East 349.15 feet, North 44° 19' East 145.39 feet, North 17° 40' East 137.40 feet, North 04° 58' East 225.42 feet, North 12° 20' East 151.12 feet, North 26° 04' East 173.97 feet, North 11° 55' East 285.05 feet, North 22° 56' East 166.80 feet, North 32° 14' East 170.88 feet, North 53° 27' East 161.26 feet, North 47° 12' East 126.93 feet, North 65° 02' East 76.43 feet, North 45° 17' East 78.38 feet, North 31° 38' East 91.54 feet, North 55° 55' East 99.86 feet and North 35° 11' East 177.94 feet to the Inverness-Pt. Reyes County Road.

EXHIBIT "A"

BOOK 2634 PAGE 643



Office of the Attorney General

Washington, D. C. 20530

December 12, 1973

Honorable Rogers C. B. Morton
Secretary of the Interior
Washington, D. C.

My dear Mr. Secretary:

Re: File No. 33-5-2295-227
Tract No. 02-106
County Marin State California

An examination has been made of the title evidence and related papers pertaining to certain land in which interests have been acquired under authority of existing legislation. The land and estate acquired by the United States are more particularly described in the deed.

The title evidence and accompanying data disclose valid title to be vested in the United States of America subject to the rights and easements noted in Schedule A attached hereto which your Department has advised will not interfere with the proposed use of the land.

The title evidence and related papers have been retained in the files of this Department.

Sincerely yours,

Robert H. Bark

Acting Attorney General

Schedule A

File No.: 33-5-2295-227

Tract No.: 02-106

Project: Point Reyes National Seashore located in Marin
County, California

Estate Acquired: Fee simple and easement

Acreage: 5.00

Consideration: \$79,200.00

The deed to the United States of America was executed by Johnson Oyster Company, a corporation, on November 9, 1972, filed for record on November 30, 1972, and recorded in Book 2634, at page 641.

The title insurance policy was last satisfactorily certified as of November 30, 1972, by Transamerica Title Insurance Company.

The title is subject to the following:

1. Existing easements of record for public roads and highways, rights of way for railroads, pipelines, public utilities, ditches and canals.
2. Reservation by the grantors of the right to occupy the premises as set forth in the deed to the United States.

(WSC)LW 1
(May 1971)

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service

Johnson Oyster Company
Vendor

02-106
Tract

CX800032073
Contract No.

Point Reyes
National Seashore
Area

OFFER TO SELL REAL PROPERTY

The undersigned, hereinafter called the Vendor, in consideration of the mutual covenants and agreements herein set forth, offers to sell and convey to the United States of America and its assigns, the fee simple title to the following described land, with the buildings and improvements thereon, and all rights, hereditaments, easements, and appurtenances thereunto belonging, located in the

County of Marin, State of California,

containing 5.00 acres, more or less, more particularly described as follows:

See Exhibit "A" attached hereto and made a part hereof.

(WSC)LW 1
(May 1971)

subject to existing easements for public roads and highways, public utilities, railroads and pipelines, and encumbrances listed on Exhibit "B" attached hereto and made a part hereof.

Excepting and reserving only the following rights and interests in the above described property: as shown on Exhibit "C" attached hereto and made a part hereof.

The terms and conditions of this offer are as follows:

(1) The Vendor agrees that this offer may be accepted by the United States through any duly authorized representative, by delivering, mailing, or telegraphing a notice of acceptance to the Vendor at the address stated below, at any time within three (3) month(s) from the date hereof, whereupon this offer and the acceptance thereof become a binding contract.

(2) The United States of America agrees to pay the Vendor for said land the sum of Seventy Nine Thousand Two Hundred dollars
(\$ 79,200.00) payable on acceptance of this offer and approval of

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the Vendor's title; provided the Vendor can execute and deliver a good and sufficient deed conveying said land with the hereditaments and appurtenances thereunto belonging to the United States of America and its assigns, in fee simple, free and clear of all liens and encumbrances, except those specifically excepted or reserved above, together with all right, title, and interest of the Vendor in and to any streams, alleys, roads, streets, ways, strips, gores, or railroad rights-of-way abutting or adjoining said land.

(3) It is agreed that the United States will defray the expenses incident to the preparation and recordation of the deed to the United States and the procurement of the necessary title evidence.

(4) The Vendor agrees that all taxes, assessments, and encumbrances which are a lien against the land at the time of conveyance to the United States shall be satisfied of record by the Vendor at or before the transfer of title and, if the Vendor fails to do so, the United States may pay any taxes, assessments, and encumbrances which are a lien against the land; that the amount of any such payments by the United States shall be deducted from the purchase price of the land; that the Vendor will, at the request of the United States and without prior payment or tender of the purchase price, execute and deliver the deed to the United States, pay any applicable documentary revenue stamp tax or excise tax, and obtain and record such other curative evidence of title as may be required by the United States.

As soon as possible after the date of payment of the purchase price of this offer or the date of deposit in court of the funds to satisfy the award of compensations in a condemnation proceeding to acquire the real property herein described, whichever is the earliest, the United States hereby agrees to reimburse the Vendor in an amount deemed by the United States to be fair and reasonable for the following expenses incurred by the Vendor in completing this transaction:

- (a) Recording fees, transfer taxes and similar expenses incidental to conveying the real property described herein to the United States.
- (b) Penalty cost for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering said real property; and
- (c) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is earlier. The

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Vendor agrees to furnish the United States evidence that these items of expenses have been billed to and paid by him, and further agrees that the United States alone shall determine the fairness and reasonableness of the expenses to be paid.

(5) The Vendor agrees that loss or damage to the property by fire or acts of God shall be at the risk of the Vendor until the title to the land and deed to the United States have been accepted by the United States through its duly authorized representative; and, in the event that such loss or damage occurs, the United States may, without liability, refuse to accept the conveyance of the title or it may elect to accept conveyance of title to such property, in which case there shall be an equitable adjustment of the purchase price.

(6) The Vendor agrees that the United States may acquire title to said land by condemnation or other judicial proceedings, in which event the Vendor agrees to cooperate with the United States in the prosecution of such proceedings; agrees that the consideration hereinabove stated shall be the full amount of the award of just compensation, inclusive of interest, for the taking of said land; agrees that any and all awards of just compensation that may be made in the proceeding to any defendant shall be payable and deductible from said amount.

(7) The Vendor further agrees that from the date hereof, officers and accredited agents of the United States shall have, at all proper times, rights and privileges to survey and enter upon said property for all lawful purposes in connection with the acquisition thereof.

(8) It is agreed that the spouse, if any, of the Vendor, by signing below, agrees to join in any deed to the United States and to execute any instrument deemed necessary to convey to the United States any separate or community estate or interest in the subject property and to relinquish and release any dower, curtesy, homestead, or other rights or interests of such spouse therein.

(9) The Vendor represents and it is a condition of acceptance of this offer that no member of or delegate to Congress, or resident commissioner, shall be admitted to or share any part of this agreement, or to any benefits that may arise therefrom; but this provision shall not be construed to extend to any agreement if made with a corporation for its general benefit.

(10) The terms and conditions aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the Vendor.

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(11) All terms and conditions with respect to this offer are expressly contained herein and the Vendor agrees that no representative or agent of the United States has made any representation or promise with respect to this offer not expressly contained herein.

(12) The Vendor hereby authorizes and directs the United States to accomplish payment of the amount specified in paragraph 2 above by depositing a check in said amount payable to the Marin Title Guaranty Company, escrow agent for the Vendor, 1300 Fourth Street, San Rafael, California.

Signed and Delivered this 12th day of October, 1972.

WITNESSES:

VENDORS: Johnson Oyster Company

Witness

Charles W. Johnson
Vendor

Charles W. Johnson, President

Witness

Milton Simmons
Vendor

Milton Simmons, Secretary-Treasurer

Witness

Vendor

Witness

Vendor

Notice of acceptance of this offer is to be sent to:

Mr. Charles W. Johnson, P. O. Box 68, Inverness, California 94937

Name

Address

City, State, ZIP

ACCEPTANCE OF OFFER TO SELL REAL PROPERTY

The offer of the Vendor contained herein is hereby accepted for and on behalf of the UNITED STATES OF AMERICA.

Date:

10/16/72

By:

Charles W. Johnson

Title:

CHIEF, DIVISION OF LANDS
WESTERN REGION

Exhibit "A"

That certain real property situate in the County of Marin, State of California, described as follows:

PARCEL ONE:

BEGINNING at a point which bears South 43° 25' 25" West 4667.148 feet from the most Easterly corner of that certain parcel of land conveyed by James and Margaret McClure to R.C.S. Communications, Inc. by Deed dated September 28, 1929 and recorded October 15, 1929 in Liber 185 of Official Records, at page 93, Marin County Records; and running thence South 60° 09' East 938.6 feet, South 2° 09' East 238.01 feet, North 60° 09' West 938.6 feet and North 2° 09' West 238.01 feet to the point of beginning

PARCEL TWO:

A RIGHT OF WAY for roadway purposes over a strip of land 14 feet in width, the center line of which is described as follows: BEING that certain property in the County of Marin, State of California, more particularly described as follows: BEGINNING at a point on the Northeasterly boundary line of that certain tract of land conveyed from Edward H. Heims et ux to Larry Jensen et ux, by Deed dated February 2, 1951, distant on said line South 60° 09' East 198.25 feet from the most Northerly corner of said tract; and running thence North 42° 47' West 171.66 feet, North 21° 12' West 107.84 feet, North 4° 48' West 105.70 feet, North 25° 45' East 168.34 feet, North 11° 06' East 96.79 feet, North 6° 29' West 224.11 feet, North 13° 57' West 110.34 feet, North 01° 18' West 91.41 feet, North 22° 51' East 349.15 feet, North 44° 19' East 145.39 feet, North 17° 40' East 137.40 feet, North 04° 58' East 225.42 feet, North 12° 20' East 151.12 feet, North 26° 04' East 173.97 feet, North 11° 55' East 285.05 feet, North 22° 56' East 166.80 feet, North 32° 14' East 170.88 feet, North 53° 27' East 161.26 feet, North 47° 12' East 126.93 feet, North 65° 02' East 76.43 feet, North 45° 17' East 78.38 feet, North 31° 38' East 91.54 feet, North 55° 55' East 99.86 feet and North 35° 11' East 177.94 feet to the Inverness-Pt. Reyes County Road.

Exhibit "B"

1. Any adverse claim based upon the assertion that some portion of said land is tide or submerged lands, or has been created by artificial means or has accreted to such portions so created.
2. No insurance will be undertaken as to any portion of the herein described property that lies below the line of ordinary high tide as it came to rest from natural means.
3. Conditions regarding the use of Parcel Two herein as contained in an Agreement between Edward H. Heims, et ux and A. L. Jensen, et ux, recorded February 5, 1951, in Book 676 of Official Records at page 382.

The interest of the Heims now vests in the United States of America.

EXHIBIT "C"

Reserving to Vendor, its successors and assigns, a terminable right to use and occupy the above-described property, as delineated on Exhibit "D", attached, together with the improvements situated thereon, for a period of 40 years for the purpose of processing and selling wholesale and retail oysters, seafood and complimentary food items, the interpretation of oyster cultivation to the visiting public, and residential purposes reasonably incidental thereto, subject to the following:

Definitions

The term "Director" as used herein means the Director of the National Park Service; and includes all his duly authorized, delegated representatives.

The term "Vendor" as used herein means the Johnson Oyster Company, a California Corporation, and its successors and assigns.

1. The premises reserved by Vendor hereunder shall at all times be maintained in a safe, sanitary, and sightly condition, open to reasonable inspection by the Director, and meeting all Federal, State, and County health, sanitation, and safety standards applicable to operation of and residence within areas engaged in the processing and retail sale of oysters.

2. Utility services related to the reserved premises, including but not limited to water, electricity, sanitation, and garbage disposal are the sole responsibility of Vendor. Garbage and debris shall be disposed of by Vendor outside the boundary of the Point Reyes National Seashore. Use of the existing trash and garbage dumps on the reserved premises shall be discontinued and the dumps shall be restored to a natural condition by Vendor.

3. Oyster shells may be disposed of within the boundaries of the Point Reyes National Seashore and may be stockpiled for a reasonable period of time on the premises for use as follows:

- a) Upon approval and under an agreement with the Fish and Game Department and other State of California regulatory authorities, some shells may be ground up and deposited uniformly on the water bottom allotments.
- b) Some shells may be used for surfacing the road southerly from Sir Francis Drake Highway to the premises including the parking area on the reserved premises and the parking area on the adjacent land under special use by the Vendor. Approval of the Superintendent will be required prior to deposition of shells anywhere else within the Seashore for road surfacing purposes.
- c) Some shells may be used for seed purpose in oyster propagation.

d) Some shells will be maintained to offer as gifts to the visiting public.

4. Vendor shall not commit waste upon the reserved premises and shall at all times maintain them in a neat and sightly condition.

5. A permanent residence shall be maintained upon the reserved property, occupied by a responsible employee of Vendor.

6. Vendor 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 Vendor in or upon the reserved premises or improvements without the prior written approval of the Director.

8. Vendor and its employees shall take all reasonable precautions to prevent fires in and about the reserved premises, and shall cooperate with the Director in fire extinguishment in the reserved premises and areas immediately adjacent to the reserved premises.

9. During the term of Vendor's reservation, Vendor shall be solely responsible for all claims arising from use of the reserved premises by visitors, and shall carry extended coverage liability insurance protecting against such claims in an amount and of a type agreed by the Director, to be sufficient for this purpose.

10. During the term of occupancy, the Vendor shall carry fire and extended coverage insurance to the full insurable value of the improvements. The insured under said fire and extended coverage insurance shall be the Vendor and the United States of America as their interests may appear. In case of loss, the Vendor may replace the improvements with equivalent structures. Should the Vendor elect not to rebuild, all insurance proceeds shall be divided between the United States and the Vendor as their interests may appear.

11. Upon expiration of the reserved term, a special use permit may be issued for the continued occupancy of the property for the herein described purposes, 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 Service regulations in effect at the time the reservation expires.

12. Upon expiration of Vendor's reservation, or the extended use period by permit, it shall remove all structures and improvements placed upon the premises during the period of its reservation. Any such property not removed from the reserved premises within 90 days after expiration of Vendor's reservation shall be presumed to have been abandoned and shall be

presumed to have been abandoned and shall become the property of the United States of America, but this shall in no way relieve Vendor of liability for the cost of removal of such property from the reserved premises.

13. Disputes concerning performance under the terms of this reservation shall be determined by the Secretary of the Interior or his duly authorized representative in a manner consistent with due process of law.

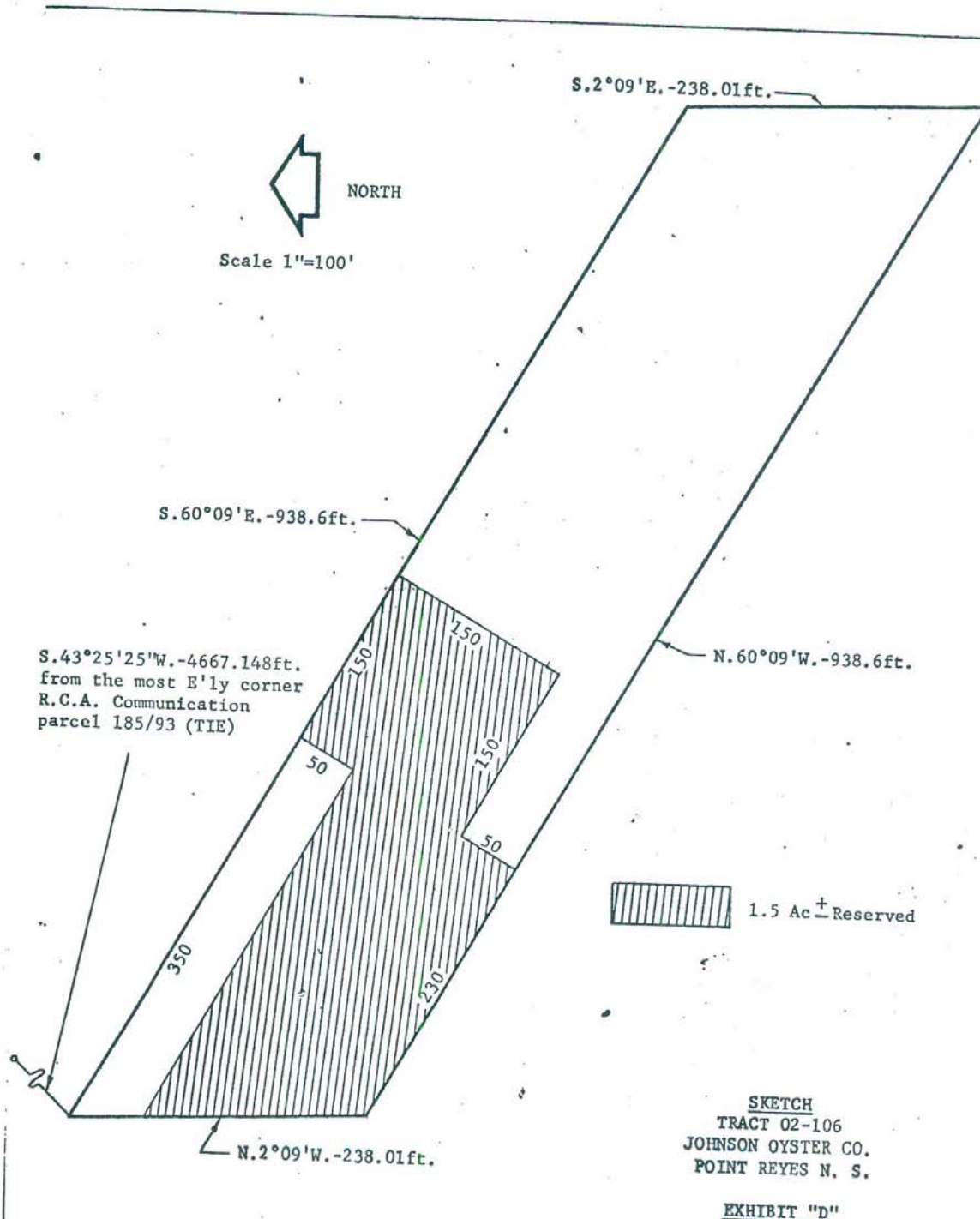
14. Should Vendor elect to dispose of any unused portion of the remainder of its reserved occupancy, the United States of America shall be afforded a right of first refusal to acquire the same.

15. A special use permit will be issued by the Director to Vendor for public interpretation of oyster cultivation by Vendor or adjacent premises, effective concurrently with Vendor's reservation.

16. Vendor shall keep the reserved premises open to the public for the interpretation of oyster cultivation and processing.

17. Vendor, its successors and assigns, shall pay the possessory interest tax during the term of use and occupancy.

18. Vendor cannot conduct a restaurant operation on the premises without prior written approval of the Director.



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B

RELEVANT LEGISLATION

- Section 124 of PL 111-88
- Point Reyes National Seashore Enabling Legislation
- State Land Grant, Assembly Bill No. 1024, Chapter 983, July 9, 1965
- PL 94-567
- PL 94-544
- PL 88-577
- PL 99-68
- Federal Register Vol. 64, No. 222 11/18/1999, Notices: Public Law 94-567
Notice of Designation of Potential Wilderness as Wilderness, PORE

GOLDEN GATE NATIONAL RECREATION AREA, FORT BAKER
AMENDMENT

SEC. 123. Section 120 of title I of H.R. 3423 (Appendix C) as enacted into law by section 1000(a)(3) of division B of Public Law 106–113 is amended by striking the last sentence.

16 USC 460bb–3
note.

POINT REYES NATIONAL SEASHORE, EXTENSION OF PERMIT

Time period. SEC. 124. 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 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. Nothing in this section shall be construed to have any application to any location other than Point Reyes National Seashore; nor shall anything in this section be cited as precedent for management of any potential wilderness outside the Seashore.

Deadline.
Payments.

NATIONAL PARK SYSTEM, SPECIAL RESOURCE STUDY

SEC. 125. (a) IN GENERAL.—The Secretary of the Interior (referred to in this section as the "Secretary") shall conduct a special resource study of the national significance, suitability, and feasibility of including the Honouliuli Gulch and associated sites within the State of Hawaii in the National Park System.

(b) GUIDELINES.—In conducting the study, the Secretary shall use the criteria for the study of areas for potential inclusion in the National Park System described in section 8 of Public Law 91–383 (16 U.S.C. 1a–5).

(c) CONSULTATION.—In conducting the study, the Secretary shall consult with—

- (1) the State of Hawaii;
- (2) appropriate Federal agencies;
- (3) Native Hawaiian and local government entities;
- (4) private and nonprofit organizations;
- (5) private land owners; and
- (6) other interested parties.

(d) THEMES.—The study shall evaluate the Honouliuli Gulch, associated sites located on Oahu, and other islands located in the State of Hawaii with respect to—

- (1) the significance of the site as a component of World War II;
- (2) the significance of the site as the site related to the forcible internment of Japanese Americans, European Americans, and other individuals; and
- (3) historic resources at the site.

16 USC Sec. 459c

01/22/02

TITLE 16 - CONSERVATION
CHAPTER 1 - NATIONAL PARKS, MILITARY PARKS, MONUMENTS, AND
SEASHORES
SUBCHAPTER LXIII - NATIONAL SEASHORE RECREATIONAL AREAS

Sec. 459c. Point Reyes National Seashore; purposes; authorization for establishment

-STATUTE-

In order to save and preserve, for purposes of public recreation, benefit, and inspiration, a portion of the diminishing seashore of the United States that remains undeveloped, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to take appropriate action in the public interest toward the establishment of the national seashore set forth in section 459c-1 of this title.

-SOURCE-

(Pub. L. 87-657, Sec. 1, Sept. 13, 1962, 76 Stat. 538.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459c-2, 459c-4, 459c-5, 459c-6, 459c-6b, 459c-7 of this title.

Sec. 459c-1. Description of area

-STATUTE-

(a) Boundary map; availability; publication in Federal Register

The Point Reyes National Seashore shall consist of the lands, waters, and submerged lands generally depicted on the map entitled "Boundary Map, Point Reyes National Seashore", numbered 612-80,008-E and dated May 1978, plus those areas depicted on the map entitled "Point Reyes and GGNRA Amendments, dated October 25, 1979".

The map referred to in this section shall be on file and available for public inspection in the Offices of the National Park Service, Department of the Interior, Washington, District of Columbia. After advising the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate in writing, the Secretary may make minor revisions of the boundaries of the Point Reyes National Seashore when necessary by publication of a revised drawing or other boundary description in the Federal Register.

(b) Bear Valley Ranch right-of-way

The area referred to in subsection (a) of this section shall also include a right-of-way to the aforesaid tract in the general vicinity of the northwesterly portion of the property known as "Bear Valley Ranch", to be selected by the Secretary, of not more than four hundred feet in width, together with such adjoining lands as would be deprived of access by reason of the acquisition of such right-of-way.

-SOURCE-

(Pub. L. 87-657, Sec. 2, Sept. 13, 1962, 76 Stat. 538; Pub. L. 89-666, Sec. 1(a), Oct. 15, 1966, 80 Stat. 919; Pub. L. 93-550, title II, Sec. 201, Dec. 26, 1974, 88 Stat. 1744; Pub. L. 95-625, title III, Sec. 318(a), Nov. 10, 1978, 92 Stat. 3486; Pub. L. 96-199, title I, Sec. 101(a)(1), Mar. 5, 1980, 94 Stat. 67; Pub. L. 103-437, Sec. 6(d)(16), Nov. 2, 1994, 108 Stat. 4584.)

AMENDMENTS

1994 - Subsec. (a). Pub. L. 103-437 substituted "Natural Resources" for "Interior and Insular Affairs" after "Committee on".

1980 - Subsec. (a). Pub. L. 96-199 inserted ", plus those areas depicted on the map entitled 'Point Reyes and GGNRA Amendments, dated October 25, 1979' " after "dated May 1978".

1978 - Subsec. (a). Pub. L. 95-625 substituted as a description of the area the lands generally depicted on Boundary Map numbered 612-80,008-E and dated May 1978 for prior such depiction on Boundary Map numbered 612-80,008-B, and dated August 1974; included submerged lands in the description; made the map specifically available in the Washington, District of Columbia, Office; and authorized minor revisions of boundaries and publication thereof in the Federal Register after advising Congressional committees.

1974 - Subsec. (a). Pub. L. 93-550 substituted as a boundary description Boundary Map No. 612-80,008-B, and dated August 1974, on file in the office of the National Park Service, Department of the Interior, for a boundary map designated NS-PR-7001, dated June 1, 1960, on file with the Director of the National Park Service, Washington, D.C., and all measurements relating thereto.

1966 - Subsec. (b). Pub. L. 89-666 inserted "to the aforesaid tract in the general vicinity of the northwesterly portion of the property known as 'Bear Valley Ranch' " after "right-of-way", struck out "from the intersection of Sir Francis Drake Boulevard and Haggerty Gulch" after "aforesaid tract" and included such adjoining lands as would be deprived of access by reason of the right-of-way.

CHANGE OF NAME

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459c, 459c-2, 459c-4, 459c-5, 459c-6, 459c-6b, 459c-7 of this title.

Sec. 459c-2. Acquisition of property

-STATUTE-

- (a) Authority of Secretary; manner and place; concurrence of State owner; transfer from Federal agency to administrative jurisdiction of Secretary; liability of United States under contracts contingent on appropriations

The Secretary is authorized to acquire, and it is the intent of Congress that he shall acquire as rapidly as appropriated funds become available for this purpose or as such acquisition can be accomplished by donation or with donated funds or by transfer, exchange, or otherwise the lands, waters, and other property, and improvements thereon and any interest therein, within the areas described in section 459c-1 of this title or which lie within the boundaries of the seashore as established under section 459c-4 of this title (hereinafter referred to as "such area"). Any property, or interest therein, owned by a State or political subdivision thereof may be acquired only with the concurrence of such owner. Notwithstanding any other provision of law, any Federal property located within such area may, with the concurrence of the agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out the provisions of sections 459c to 459c-7 of this title. In exercising his authority to acquire property in accordance with the provisions of this subsection, the Secretary may enter into contracts requiring the expenditure, when appropriated, of funds authorized by section 459c-7 of this title, but the liability of the United States under any such contract shall be contingent on the appropriation of funds sufficient to fulfill the obligations thereby incurred.

- (b) Payment for acquisition; fair market value

The Secretary is authorized to pay for any acquisitions which he makes by purchase under sections 459c to 459c-7 of this title their fair market value, as determined by the Secretary, who may in his discretion base his determination on an independent appraisal obtained by him.

- (c) Exchange of property; cash equalization payments

In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property located within such area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary within California and adjacent States, notwithstanding any other provision of law. The properties so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the values of the properties exchanged.

-SOURCE-

(Pub. L. 87-657, Sec. 3, Sept. 13, 1962, 76 Stat. 539; Pub. L. 91-223, Sec. 2(a), Apr. 3, 1970, 84 Stat. 90.)

AMENDMENTS

1970 - Pub. L. 91-223 substituted introductory "The" for "Except as provided in section 459c-3 of this title, the".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459c-4, 459c-5, 459c-6, 459c-6b, 459c-7 of this title.

Sec. 459c-3. Repealed. Pub. L. 91-223, Sec. 2(b), Apr. 3, 1970, 84 Stat. 90

Section, Pub. L. 87-657, Sec. 4, Sept. 13, 1962, 76 Stat. 540, provided conditions for exercise of eminent domain within pastoral zone and defined "ranching and dairying purposes".

Sec. 459c-4. Point Reyes National Seashore

-STATUTE-

(a) Establishment; notice in Federal Register

As soon as practicable after September 13, 1962, and following the acquisition by the Secretary of an acreage in the area described in section 459c-1 of this title, that is in the opinion of the Secretary efficiently administrable to carry out the purposes of sections 459c to 459c-7 of this title, the Secretary shall establish Point Reyes National Seashore by the publication of notice thereof in the Federal Register.

(b) Distribution of notice and map

Such notice referred to in subsection (a) of this section shall contain a detailed description of the boundaries of the seashore which shall encompass an area as nearly as practicable identical to the area described in section 459c-1 of this title. The Secretary shall forthwith after the date of publication of such notice in the Federal Register (1) send a copy of such notice, together with a map showing such boundaries, by registered or certified mail to the Governor of the State and to the governing body of each of the political subdivisions involved; (2) cause a copy of such notice and map to be published in one or more newspapers which circulate in each of the localities; and (3) cause a certified copy of such notice, a copy of such map, and a copy of sections 459c to 459c-7 of this title to be recorded at the registry of deeds for the county involved.

-SOURCE-

(Pub. L. 87-657, Sec. 4, formerly Sec. 5, Sept. 13, 1962, 76 Stat. 540; renumbered Sec. 4, Pub. L. 91-223, Sec. 2(c), Apr. 3, 1970, 84 Stat. 90.)

AMENDED DESCRIPTION OF BOUNDARIES OF POINT REYES NATIONAL SEASHORE;

PUBLICATION IN FEDERAL REGISTER

Pub. L. 93-550, title II, Sec. 202, Dec. 26, 1974, 88 Stat. 1744, provided that: "The Secretary of the Interior shall, as soon as practicable after the date of enactment of this title (Dec. 26, 1974), publish an amended description of the boundaries of the Point Reyes National Seashore in the Federal Register, and thereafter he shall take such action with regard to such amended description and the map referred to in section 201 of this title (amending section 459c-1 of this title) as is required in the second sentence of subsection (b) of section 4 of the act of September 13, 1962, as amended (subsec. (b) of this section)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459c-2, 459c-5, 459c-6, 459c-6b, 459c-7 of this title.

Sec. 459c-5. Owner's reservation of right of use and occupancy for fixed term of years or life

-STATUTE-

- (a) Election of term; fair market value; termination; notification; lease of Federal lands: restrictive covenants, offer to prior owner or leaseholder

Except for property which the Secretary specifically determines is needed for interpretive or resources management purposes of the seashore, the owner of improved property or of agricultural property on the date of its acquisition by the Secretary under sections 459c to 459c-7 of this title may, as a condition of such acquisition, retain for himself and his or her heirs and assigns a right of use and occupancy for a definite term of not more than twenty-five years, or, in lieu thereof, for a term ending at the death of the owner or the death of his or her spouse, whichever is later. The owner shall elect the term to be reserved. Unless the property is wholly or partly donated to the United States, the Secretary shall pay to the owner the fair market value of the property on the date of acquisition minus the fair market value on that date of the right retained by the owner. A right retained pursuant to this section shall be subject to termination by the Secretary upon his or her determination that it is being exercised in a manner inconsistent with the purposes of sections 459c to 459c-7 of this title, and it shall terminate by operation of law upon the Secretary's notifying the holder of the right of such determination and tendering to him or her an amount equal to the fair market value of that portion of the right which remains unexpired. Where appropriate in the discretion of the Secretary, he or she may lease federally owned land (or any interest therein) which has been acquired by the Secretary under sections 459c to 459c-7 of this title, and which was agricultural land prior to its acquisition. Such lease shall be subject to such restrictive covenants as may be necessary to carry out the purposes of sections 459c to 459c-7 of this title. Any land to be leased by the Secretary under this section shall be offered first for such lease to the person who owned such land or was a leaseholder thereon immediately before its acquisition by the United States.

- (b) "Improved and agricultural property" defined

As used in sections 459c to 459c-7 of this title, the term "improved property" shall mean a private noncommercial dwelling, including the land on which it is situated, whose construction was begun before September 1, 1959, or, in the case of areas added by action of the Ninety-fifth Congress, May 1, 1978 or, in the case of areas added by action of the Ninety-sixth Congress, May 1, 1979, and structures accessory thereto (hereinafter in this subsection referred to as "dwelling"), together with such amount and locus of the property adjoining and in the same ownership as such dwelling as the Secretary designates to be reasonably necessary for the enjoyment of such dwelling for the sole purpose of noncommercial residential use and occupancy. In making such designation the Secretary shall take into account the manner of noncommercial residential use and occupancy in which the dwelling and such adjoining property has usually been enjoyed by its owner or occupant. The term "agricultural property" as used in sections 459c to 459c-7 of this title means lands which were in regular use for, or were being converted to agricultural, ranching, or dairying purposes as of May 1, 1978 or, in the case of areas added by action of the Ninety-sixth Congress, May 1, 1979, together with residential and other structures related to the above uses of the property that were in existence or under construction as of May 1, 1978.

- (c) Payment deferral; scheduling; interest rate

In acquiring those lands authorized by the Ninety-fifth Congress for the purposes of sections 459c to 459c-7 of this title, the Secretary may, when agreed upon by the landowner involved, defer payment or schedule payments over a period of ten years and pay interest on the unpaid balance at a rate not exceeding that paid by the Treasury of the United States for borrowing purposes.

(d) Lands donated by State of California

The Secretary is authorized to accept and manage in accordance with sections 459c to 459c-7 of this title, any lands and improvements within or adjacent to the seashore which are donated by the State of California or its political subdivisions. He is directed to accept any such lands offered for donation which comprise the Tomales Bay State Park, or lie between said park and Fish Hatchery Creek. The boundaries of the seashore shall be changed to include any such donated lands.

(e) Fee or admission charge prohibited

Notwithstanding any other provision of law, no fee or admission charge may be levied for admission of the general public to the seashore.

-SOURCE-

(Pub. L. 87-657, Sec. 5, formerly Sec. 6, Sept. 13, 1962, 76 Stat. 541; renumbered Sec. 5, Pub. L. 91-223, Sec. 2(c), Apr. 3, 1970, 84 Stat. 90; amended Pub. L. 95-625, title III, Sec. 318(b)-(d), Nov. 10, 1978, 92 Stat. 3487; Pub. L. 96-199, title I, Sec. 101(a)(2)-(4), Mar. 5, 1980, 94 Stat. 67.)

AMENDMENTS

1980 - Subsec. (a). Pub. L. 96-199, Sec. 101(a)(2), substituted "Except for property which the Secretary specifically determines is needed for interpretive or resources management purposes of the seashore, the" for "The" in first sentence.

Subsec. (b). Pub. L. 96-199, Sec. 101(a)(3), inserted "or, in the case of areas inserted by action of the Ninety-sixth Congress, May 1, 1979," after "May 1, 1978" and "that were in existence or under construction as of May 1, 1978" after "related to the above uses of the property".

Subsecs. (d), (e). Pub. L. 96-199, Sec. 101(a)(4), added subsecs. (d) and (e).

1978 - Subsec. (a). Pub. L. 95-625, Sec. 318(b), extended provision to agricultural property; provided for: retention rights of heirs and assigns, retention rights for term of twenty-five years or for term ending with death of owner or spouse, whichever was later, as elected by owner, which provision previously authorized retention for term of fifty years, termination of right of retention and notice thereof, and for lease of federally owned lands, subject to restrictive covenants, with first offer to prior owner or leaseholder; and included clause relating to donation of property to the United States.

Subsec. (b). Pub. L. 95-625, Sec. 318(c), defined "improved property" to include private dwelling, the construction of which was begun, in the case of areas added by action of the Ninety-fifth Congress, October 1, 1978, and included definition of "agricultural property".

Subsec. (c). Pub. L. 95-625, Sec. 318(d), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459c-2, 459c-4, 459c-6, 459c-6b, 459c-7 of this title.

Sec. 459c-6. Administration of property

-STATUTE-

(a) Protection, restoration, and preservation of natural environment

Except as otherwise provided in sections 459c to 459c-7 of this title, the property acquired by the Secretary under such sections shall be administered by the Secretary 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, subject to the provisions of sections 1, 2, 3, and 4 of this title, as amended and supplemented, and in accordance with other laws of general application relating to the national park system as defined by sections 1b to 1d of this title, except that authority otherwise available to the Secretary for the conservation and management of natural resources may be utilized to the extent he finds such authority will further the purposes of sections 459c to 459c-7 of this title.

(b) Hunting and fishing regulations

The Secretary may permit hunting and fishing on lands and waters under his jurisdiction within the seashore in such areas and under such regulations as he may prescribe during open seasons prescribed by applicable local, State, and Federal law. The Secretary shall consult with officials of the State of California and any political subdivision thereof who have jurisdiction of hunting and fishing prior to the issuance of any such regulations, and the Secretary is authorized to enter into cooperative agreements with such officials regarding such hunting and fishing as he may deem desirable.

-SOURCE-

(Pub. L. 87-657, Sec. 6, formerly Sec. 7, Sept. 13, 1962, 76 Stat. 541; renumbered Sec. 6, Pub. L. 91-223, Sec. 2(c), Apr. 3, 1970, 84 Stat. 90; amended Pub. L. 94-544, Sec. 4(a), Oct. 18, 1976, 90 Stat. 2515; Pub. L. 94-567, Sec. 7(a), Oct. 20, 1976, 90 Stat. 2695.)

AMENDMENTS

1976 - Subsec. (a). Pub. L. 94-544 and Pub. L. 94-567 made substantially identical amendments by inserting provision which directed the Secretary to administer the property acquired in such a manner so as to provide recreational, educational, historic preservation, interpretation, and scientific research opportunities consistent with the maximum protection, restoration, and preservation of the environment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459c-2, 459c-4, 459c-5, 459c-6b, 459c-7 of this title.

Sec. 459c-6a. The Clem Miller Environmental Education Center; designation

-STATUTE-

The Secretary shall designate the principal environmental education center within the seashore as "The Clem Miller Environmental Education Center", in commemoration of the

vision and leadership which the late Representative Clem Miller gave to the creation and protection of Point Reyes National Seashore.

-SOURCE-

(Pub. L. 87-657, Sec. 7, as added Pub. L. 94-544, Sec. 4(b), Oct. 18, 1976, 90 Stat. 2515, and Pub. L. 94-567, Sec. 7(b), Oct. 20, 1976, 90 Stat. 2695.)

CODIFICATION

Section 7(b) of Pub. L. 94-567 enacted this section as did section 4(b) of Pub. L. 94-544.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459c-2, 459c-4, 459c-5, 459c-6, 459c-6b, 459c-7 of this title.

Sec. 459c-6b. Cooperation with utilities district; land use and occupancy; terms and conditions

-STATUTE-

The Secretary shall cooperate with the Bolinas Public Utilities District to protect and enhance the watershed values within the seashore. The Secretary may, at his or her discretion, permit the use and occupancy of lands added to the seashore by action of the Ninety-fifth Congress by the utilities district for water supply purposes, subject to such terms and conditions as the Secretary deems are consistent with the purposes of sections 459c to 459c-7 of this title.

-SOURCE-

(Pub. L. 87-657, Sec. 8, as added Pub. L. 95-625, title III, Sec. 318(e), Nov. 10, 1978, 92 Stat. 3487.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459c-2, 459c-4, 459c-5, 459c-6, 459c-7 of this title.

Sec. 459c-7. Authorization of appropriations; restriction on use of land

-STATUTE-

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 459c to 459c-7 of this title, except that no more than \$57,500,000 shall be appropriated for the acquisition of land and waters and improvements thereon, and interests therein, and incidental costs relating thereto, in accordance with the provisions of such sections: Provided, That no freehold, leasehold, or lesser interest in any lands hereafter acquired within the boundaries of the Point Reyes National Seashore shall be conveyed for residential or commercial purposes except for public accommodations, facilities, and services provided pursuant to sections 20 to 20g and 462(h) of this title. In addition to the sums heretofore authorized by this section, there is further authorized to be appropriated \$5,000,000 for the acquisition of lands or interests therein.

-SOURCE-

(Pub. L. 87-657, Sec. 9, formerly Sec. 8, Sept. 13, 1962, 76 Stat. 541; Pub. L. 89-666, Sec. 1(b), Oct. 15, 1966, 80 Stat. 919; renumbered Sec. 7 and amended Pub. L. 91-223, Sec. 1, 2(c), Apr. 3, 1970, 84 Stat. 90; renumbered Sec. 8, Pub. L. 94-544, Sec. 4(b), Oct. 18, 1976, 90 Stat. 2515; renumbered Sec. 8, Pub. L. 94-567, Sec. 7(b), Oct. 20, 1976, 90 Stat. 2695; renumbered Sec. 9, Pub. L. 95-625, title III, Sec. 318(e), Nov. 10, 1978, 92 Stat. 3487; amended Pub. L. 95-625, title III, Sec. 318(f), as added Pub. L. 96-199, title I, Sec. 101(a)(5), Mar. 5, 1980, 94 Stat. 67.)

REFERENCES IN TEXT

Sums “heretofore” authorized by this section, referred to in text, means sums authorized by this section prior to the enactment on Mar. 5, 1980, of Pub. L. 96-199, which added the authorization for a \$5,000,000 appropriation for the acquisition of lands or interest in lands.

CODIFICATION

Section 7(b) of Pub. L. 94-567 made the identical change in the credit as did section 4(b) of Pub. L. 94-544.

AMENDMENTS

1980 - Pub. L. 96-199 inserted provisions authorizing an appropriation of \$5,000,000 for the acquisition of lands or interests therein.

1970 - Pub. L. 91-223, Sec. 1, substituted “\$57,500,000” for “\$19,135,000”, restricted conveyances of any interest in any lands acquired after April 3, 1970, only for public accommodations, facilities, and services under provisions for concessions in areas administered by National Park Service.

1966 - Pub. L. 89-666 substituted “\$19,135,000” for “\$14,000,000”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 459c-2, 459c-4, 459c-5, 459c-6, 459c-6b of this title.

DOC1549

Assembly Bill No. 1024

CHAPTER 983

An act to convey certain tide and submerged lands to the United States in furtherance of the Point Reyes National Seashore.

[Approved by Governor July 9, 1965. Filed with Secretary of State July 9, 1965.]

The people of the State of California do enact as follows:

SECTION 1. There is hereby granted to the United States, subject to the limitations which are described in Section 2 of this act, all of the right, title, and interest of the State of California, held by the state by virtue of its sovereignty in and to all of the tide and submerged lands or other lands beneath navigable waters situated within the boundaries of the Point Reyes National Seashore which the Secretary of the Interior is authorized to establish by authority of Public Law 87-637, 76 Stat. 538, and as such boundaries exist on the effective date of this act.

SEC. 2. There is hereby excepted and reserved to the State all deposits of minerals, including oil and gas, in the lands, and to the state, or persons authorized by the state, the right to prospect for, mine, and remove such deposits from the lands; provided, that no well or drilling operations of any kind shall be conducted upon the surface of such lands.

SEC. 3. There is hereby reserved to the people of the state the right to fish in the waters underlying the lands described in Section 1.

SEC. 4. If the United States ceases to use the lands for public purposes, all right, title and interest of the United States in and to such lands shall cease and the lands shall revert and rest in the state.

SEC. 5. The United States shall survey and monument the granted lands and record a description and plat thereof in the office of the County Recorder of Marin County.

90 STAT. 2692

PUBLIC LAW 94-567—OCT. 20, 1976

Public Law 94-567
94th Congress

An Act

Oct. 20, 1976
 [H.R. 13160]

To designate certain lands within units of the National Park System as wilderness; to revise the boundaries of certain of those units; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in accordance with section 3(c) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1132(c)), the following lands are hereby designated as wilderness, and shall be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act:

(a) Bandelier National Monument, New Mexico, wilderness comprising twenty-three thousand two hundred and sixty-seven acres, depicted on a map entitled "Wilderness Plan, Bandelier National Monument, New Mexico", numbered 315-20,014-B and dated May 1976, to be known as the Bandelier Wilderness.

(b) Black Canyon of the Gunnison National Monument, Colorado, wilderness comprising eleven thousand one hundred and eighty acres, depicted on a map entitled "Wilderness Plan, Black Canyon of the Gunnison National Monument, Colorado", numbered 144-20,017 and dated May 1973, to be known as the Black Canyon of the Gunnison Wilderness.

(c) Chiricahua National Monument, Arizona, wilderness comprising nine thousand four hundred and forty acres, and potential wilderness additions comprising two acres, depicted on a map entitled "Wilderness Plan, Chiricahua National Monument, Arizona", numbered 145-20,007-A and dated September 1973, to be known as the Chiricahua National Monument Wilderness.

(d) Great Sand Dunes National Monument, Colorado, wilderness comprising thirty-three thousand four hundred and fifty acres, and potential wilderness additions comprising six hundred and seventy acres, depicted on a map entitled "Wilderness Plan, Great Sand Dunes National Monument, Colorado", numbered 140-20,006-C and dated February 1976, to be known as the Great Sand Dunes Wilderness.

(e) Haleakala National Park, Hawaii, wilderness comprising nineteen thousand two hundred and seventy acres, and potential wilderness additions comprising five thousand five hundred acres, depicted on a map entitled "Wilderness Plan, Haleakala National Park, Hawaii", numbered 162-20,006-A and dated July 1972, to be known as the Haleakala Wilderness.

(f) Isle Royale National Park, Michigan, wilderness comprising one hundred and thirty-one thousand eight hundred and eighty acres, and potential wilderness additions comprising two hundred and thirty-one acres, depicted on a map entitled "Wilderness Plan, Isle Royale National Park, Michigan", numbered 139-20,004 and dated December 1974, to be known as the Isle Royale Wilderness.

(g) Joshua Tree National Monument, California, wilderness comprising four hundred and twenty-nine thousand six hundred and ninety acres, and potential wilderness additions comprising thirty-seven thousand five hundred and fifty acres, depicted on a map entitled

PUBLIC LAW 94-567—OCT. 20, 1976

90 STAT. 2693

"Wilderness Plan, Joshua Tree National Monument, California", numbered 156-20,003-D and dated May 1976, to be known as the Joshua Tree Wilderness.

(h) Mesa Verde National Park, Colorado, wilderness comprising eight thousand one hundred acres, depicted on a map entitled "Wilderness Plan, Mesa Verde National Park, Colorado", numbered 307-20,007-A and dated September 1972, to be known as the Mesa Verde Wilderness.

Mesa Verde
National Park,
Colo.

(i) Pinnacles National Monument, California, wilderness comprising twelve thousand nine hundred and fifty-two acres, and potential wilderness additions comprising nine hundred and ninety acres, depicted on a map entitled "Wilderness Plan, Pinnacles National Monument, California", numbered 114-20,010-D and dated September 1975, to be known as the Pinnacles Wilderness.

Pinnacles
National
Monument, Calif.

(j) Saguaro National Monument, Arizona, wilderness comprising seventy-one thousand four hundred acres, depicted on a map entitled "Wilderness Plan, Saguaro National Monument, Arizona", numbered 151-20,003-D and dated May 1976, to be known as the Saguaro Wilderness.

Saguaro National
Monument, Ariz.

(k) Point Reyes National Seashore, California, wilderness comprising twenty-five thousand three hundred and seventy acres, and potential wilderness additions comprising eight thousand and three acres, depicted on a map entitled "Wilderness Plan, Point Reyes National Seashore", numbered 612-90,000-B and dated September 1976, to be known as the Point Reyes Wilderness.

Point Reyes
National
Seashore,
Calif.

(l) Badlands National Monument, South Dakota, wilderness comprising sixty-four thousand two hundred and fifty acres, depicted on a map entitled "Wilderness Plan, Badlands National Monument, South Dakota", numbered 137-29,010-B and dated May 1976, to be known as the Badlands Wilderness.

Badlands
National
Monument,
S. Dak.

(m) Shenandoah National Park, Virginia, wilderness comprising seventy-nine thousand and nineteen acres, and potential wilderness additions comprising five hundred and sixty acres, depicted on a map entitled "Wilderness Plan, Shenandoah National Park, Virginia", numbered 134-90,001 and dated June 1975, to be known as the Shenandoah Wilderness.

Shenandoah
National Park,
Va.

SEC. 2. A map and description of the boundaries of the areas designated in this Act shall be on file and available for public inspection in the office of the Director of the National Park Service, Department of the Interior, and in the office of the Superintendent of each area designated in the Act. As soon as practicable after this Act takes effect, maps of the wilderness areas and descriptions of their boundaries shall be filed with the Interior and Insular Affairs Committees of the United States Senate and House of Representatives, and such maps and descriptions shall have the same force and effect as if included in this Act: *Provided*, That correction of clerical and typographical errors in such maps and descriptions may be made.

Map and
description,
public inspection.

SEC. 3. All lands which represent potential wilderness additions, upon publication in the Federal Register of a notice by the Secretary of the Interior that all uses thereon prohibited by the Wilderness Act have ceased, shall thereby be designated wilderness.

Publication in
Federal Register.
16 USC 1131
note.

SEC. 4. The boundaries of the following areas are hereby revised, and those lands depicted on the respective maps as wilderness or as potential wilderness addition are hereby so designated at such time and in such manner as provided for by this Act:

Boundary
revision.

90 STAT. 2694

PUBLIC LAW 94-567—OCT. 20, 1976

Isle Royale
National Park,
Mich.

(a) Isle Royale National Park, Michigan:
The Act of March 6, 1942 (56 Stat. 138; 16 U.S.C. 408e-408h), as amended, is further amended as follows:

(1) Insert the letter "(a)" before the second paragraph of the first section, redesignate subparagraphs (a), (b), and (c) of that paragraph as "(1)", "(2)", "(3)", respectively, and add to that section the following new paragraph:

"(b) Gull Islands, containing approximately six acres, located in section 19, township 68 north, range 31 west, in Keweenaw County, Michigan."

16 USC 408g.

(2) Amend section 3 to read as follows:

"SEC. 3. The boundaries of the Isle Royale National Park are hereby extended to include any submerged lands within the territorial jurisdiction of the United States within four and one-half miles of the shoreline of Isle Royale and the surrounding islands, including Passage Island and the Gull Islands, and the Secretary of the Interior is hereby authorized, in his discretion, to acquire title by donation to any such lands not now owned by the United States, the title to be satisfactory to him."

Pinnacles
National
Monument, Calif.

(b) Pinnacles National Monument, California:

(1) The boundary is hereby revised by adding the following described lands, totaling approximately one thousand seven hundred and seventeen and nine-tenths acres:

(a) Mount Diablo meridian, township 17 south, range 7 east: Section 1, east half east half, southwest quarter northeast quarter, and northwest quarter southeast quarter; section 12, east half northeast quarter, and northeast quarter southeast quarter; section 13, east half northeast quarter and northeast quarter southeast quarter.

(b) Township 16 south, range 7 east: Section 32, east half.

(c) Township 17 south, range 7 east: Section 4, west half; section 5, east half.

(d) Township 17 south, range 7 east: Section 6, southwest quarter southwest quarter; section 7, northwest quarter north half southwest quarter.

Publication in
Federal Register.

(2) The Secretary of the Interior may make minor revisions in the monument boundary from time to time by publication in the Federal Register of a map or other boundary description, but the total area within the monument may not exceed sixteen thousand five hundred acres: *Provided, however, That lands designated as wilderness pursuant to this Act may not be excluded from the monument. The monument shall hereafter be administered in accordance with the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented.*

(3) In order to effectuate the purposes of this subsection, the Secretary of the Interior is authorized to acquire by donation, purchase, transfer from any other Federal agency or exchange, lands and interests therein within the area hereafter encompassed by the monument boundary, except that property owned by the State of California or any political subdivision thereof may be acquired only by donation.

Appropriation
authorization.

(4) There are authorized to be appropriated, in addition to such sums as may heretofore have been appropriated, not to exceed \$955,000 for the acquisition of lands or interests in lands authorized by this subsection. No funds authorized to be appropriated pursuant to this Act shall be available prior to October 1, 1977.

PUBLIC LAW 94-567—OCT. 20, 1976

90 STAT. 2695

SEC. 5. (a) The Secretary of Agriculture shall, within two years after the date of enactment of this Act, review, as to its suitability or nonsuitability for preservation as wilderness, the area comprising approximately sixty-two thousand nine hundred and thirty acres located in the Coronado National Forest adjacent to Saguaro National Monument, Arizona, and identified on the map referred to in section 1(j) of this Act as the "Rincon Wilderness Study Area," and shall report his findings to the President. The Secretary of Agriculture shall conduct his review in accordance with the provisions of subsections 3(b) and 3(d) of the Wilderness Act, except that any reference in such subsections to areas in the national forests classified as "primitive" on the effective date of that Act shall be deemed to be a reference to the wilderness study area designated by this Act and except that the President shall advise the Congress of his recommendations with respect to this area within two years after the date of enactment of this Act.

Rincon
Wilderness Study
Area, suitability
review.
16 USC 1132
note.

Report to
President.
16 USC 1132.

(b) The Secretary of Agriculture shall give at least sixty days' advance public notice of any hearing or other public meeting relating to the review provided for by this section.

Notice and
hearing.

SEC. 6. The areas designated by this Act as wilderness shall be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and, where appropriate, any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

Administration.

SEC. 7. (a) Section 6(a) of the Act of September 13, 1962 (76 Stat. 538), as amended (16 U.S.C. 459c-6a) is amended by inserting "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 with the area" immediately after "shall be administered by the Secretary".

16 USC 459c-6.

(b) Add the following new section 7 and redesignate the existing section 7 as section 8:

16 USC 459c-7.

"**SEC. 7.** The Secretary shall designate the principal environmental education center within the Seashore as 'The Clem Miller Environmental Education Center,' in commemoration of the vision and leadership which the late Representative Clem Miller gave to the creation and protection of Point Reyes National Seashore."

The Clem Miller
Environmental
Education
Center,
designation.
16 USC 459c-6a.
Whiskey
Mountain Area,
classification as a
primitive area.

SEC. 8. Notwithstanding any other provision of law, any designation of the lands in the Shoshone National Forest, Wyoming, known as the Whiskey Mountain Area, comprising approximately six thousand four hundred and ninety-seven acres and depicted as the "Whiskey Mountain Area—Glacier Primitive Area" on a map entitled "Proposed Glacier Wilderness and Glacier Primitive Area", dated September 23, 1976, on file in the Office of the Chief, Forest Service, Department of Agriculture, shall be classified as a primitive area until the Secretary of Agriculture or his designee determines otherwise pursuant to classification procedures for national forest primitive areas. Provisions of any other Act designating the Fitzpatrick Wil-

90 STAT. 2696

PUBLIC LAW 94-567—OCT. 20, 1976

derness in said Forest shall continue to be effective only for the approximately one hundred and ninety-one thousand one hundred and three acres depicted as the "Proposed Glacier Wilderness" on said map.

Approved October 20, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-1427 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 94-1357 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 122 (1976):

Sept. 22, considered and passed House.

Oct. 1, considered and passed Senate, amended; House agreed to Senate amendments.

PUBLIC LAW 94-544 -- Oct. 18, 1976

90 STAT. 2515

Public Law 94-544**94th Congress****An Act**

To designate certain lands in the Point Reyes National Seashore, California, as wilderness, amending the Act of September 13, 1962 (76 Stat. 538), as amended (16 U.S.C. 459c-6a), and for other purposes.

Oct. 18, 1976
[H.R. 8002]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in furtherance of the purposes of the Point Reyes National Seashore Act (76 Stat. 538 16 U.S.C. 459c), and of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131-36), and in accordance with section 3(c) of the Wilderness Act, the following lands within the Point Reyes National Seashore are hereby designated as wilderness, and shall be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act: those lands comprising twenty-five thousand three hundred and seventy acres, and potential wilderness additions comprising eight thousand and three acres, depicted on a map entitled "Wilderness Plan, Point Reyes National Seashore", numbered 612-90,000-B and dated September 1976, to be known as the Point Reyes Wilderness.

Point Reyes
National
Seashore, Calif.
Certain lands
designated as
wilderness areas.
16 USC 1132

note.
16 USC 1132
16 USC 1131
note.

SEC. 2. As soon as practicable after this Act takes effect, the Secretary of the Interior shall file a map of the wilderness area and a description of its boundaries with the Interior and Insular Affairs Committees of the United States Senate and House of Representatives, and such map and descriptions shall have the same force and effect as if included in this Act; *Provided, however,* That correction of clerical and typographical errors in such map and descriptions may be made.

Map and
description, filing
with
congressional
committees.

SEC. 3. The area designated by this Act as wilderness shall be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of this Act, and, where appropriate, any reference to the Secretary of Agriculture, shall be deemed to be a reference to the Secretary of the Interior.

Administration.

SEC. 4 (a) Amend the Act of September 13, 1962 (76 Stat. 538), as amended (16 U.S.C. 459c-6a), as follow:

16 USC 459c-6.

In section 6(a) insert immediately after the words "shall be administered by the Secretary," the words "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,".

(b) Add the following new section 7 and redesignate the existing section 7 as section 8:

"Sec. 7. The Secretary shall designate the principal environmental education center within the seashore as 'The Clem Miller Environ-

16 USC 459c-7.
The Clem Miller
Environmental
Education Center,
designation.
16 USC 459c-6a.

90 STAT. 2516

PUBLIC LAW 94-544 -- Oct. 18, 1976

mental Education Center', in commemoration of the vision and leadership which the late Representative Clem Miller gave to the creation and protection of Point Reyes National Seashore."

Approved October 18, 1976.

LEGISLATIVE HISTORY

HOUSE REPORT No. 94-1680 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 122 (1976):

Sept. 29, considered and passed House.

Oct. 1, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 12, No. 43:

On. 19. Presidential statement.

WILDERNESS ACT

Public Law 88-577 (16 U.S.C. 1131-1136)
 88th Congress, Second Session
 September 3, 1964

AN ACT

To establish a National Wilderness Preservation System for the permanent good of the whole people, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Short Title

Section 1. This Act may be cited as the "Wilderness Act."

WILDERNESS SYSTEM ESTABLISHED STATEMENT OF POLICY

Section 2.(a) In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as "wilderness areas" except as provided for in this Act or by a subsequent Act.

(b) The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress. No appropriation shall be available for the payment of expenses or salaries for the administration of the National Wilderness Preservation System as a separate unit nor shall any appropriations be available for additional personnel stated as being required solely for the purpose of managing or administering areas solely because they are included within the National Wilderness Preservation System.

DEFINITION OF WILDERNESS

(c) A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

NATIONAL WILDERNESS PRESERVATION SYSTEM - EXTENT OF SYSTEM

Section 3.(a) All areas within the national forests classified at least 30 days before September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "wilderness", "wild", or "canoe" are hereby designated as wilderness areas. The Secretary of Agriculture shall -

(1) Within one year after September 3, 1964, file a map and legal description of each wilderness area with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such descriptions shall have the same force and effect as if included in this Act: Provided, however, That correction of clerical and typographical errors in such legal descriptions and maps may be made.

(2) Maintain, available to the public, records pertaining to said wilderness areas, including maps and legal descriptions, copies of regulations governing them, copies of public notices of, and reports submitted to Congress regarding pending additions, eliminations, or modifications. Maps, legal descriptions, and regulations pertaining to wilderness areas within their respective jurisdictions also shall be available to the public in the offices of regional foresters, national forest supervisors, and forest rangers.

Classification. (b) The Secretary of Agriculture shall, within ten years after September 3, 1964, review, as to its suitability or unsuitability for preservation as wilderness, each area in the national forests classified on September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "primitive" and report his findings to the President.

Presidential recommendation to Congress. The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designation as "wilderness" or other reclassification of each area on which review has been completed, together with maps and a definition of boundaries. Such advice shall be given with respect to not less than one-third of all the areas now classified as "primitive" within three years after September 3, 1964, not less than two-thirds within seven years after September 3, 1964, and the remaining areas within ten years after September 3, 1964.

Congressional approval. Each recommendation of the President for designation as "wilderness" shall become effective only if so provided by an Act of Congress. Areas classified as "primitive" on September 3, 1964 shall continue to be administered under the rules and regulations affecting such areas on September 3, 1964 until Congress has determined otherwise. Any such area may be increased in size by the President at the time he submits his recommendations to the Congress by not more than five thousand acres with no more than one thousand two hundred and eighty acres of such increase in any one compact unit; if it is proposed to increase the size of any such area by more than five thousand acres or by more than one thousand two hundred and eighty acres in any one compact unit the increase in size shall not become effective until acted upon by Congress. Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of primitive areas or recommending the addition of any contiguous area of national forest lands predominantly of wilderness value. Notwithstanding any other provisions of this Act, the Secretary of Agriculture may complete his review and delete such area as may be necessary, but not to exceed seven thousand acres, from the southern tip of the Gore Range-Eagles Nest Primitive Area, Colorado, if the Secretary determines that such action is in the public interest.

Report to President. (c) Within ten years after September 3, 1964 the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in the national parks, monuments and other units of the national park system and every such area of, and every roadless island within the national wildlife refuges and game ranges, under his jurisdiction on September 3, 1964 and shall report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

Presidential recommendation to Congress. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island on which review has been completed, together with a map thereof and a definition of its boundaries. Such advice shall be given with respect to not less than one-third of the areas and islands to be reviewed under this subsection within three years after September 3, 1964, not less than two-thirds within seven years of September 3, 1964 and the remainder within ten years of September 3, 1964.

Congressional approval. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. Nothing contained herein shall, by implication or otherwise, be construed to lessen the present statutory authority of the

Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system.

Suitability. (d)(1) The Secretary of Agriculture and the Secretary of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness –

Publication in Federal Register. (A) give such public notice of the proposed action as they deem appropriate, including publication in the Federal Register and in a newspaper having general circulation in the area or areas in the vicinity of the affected land;

Hearings. (B) hold a public hearing or hearings at a location or locations convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area: Provided, That if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies;

(C) at least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned, and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be included with any recommendations to the President and to Congress with respect to such area.

Proposed modification. (e) Any modification or adjustment of boundaries of any wilderness area shall be recommended by the appropriate Secretary after public notice of such proposal and public hearing or hearings as provided in subsection (d) of this section. The proposed modification or adjustment shall then be recommended with map and description thereof to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to such modification or adjustment and such recommendations shall become effective only in the same manner as provided for in subsections (b) and (c) of this section.

USE OF WILDERNESS AREAS

Section 4.(a) The purposes of this Act are hereby declared to be within and supplemental to the purposes for which national forests and units of the national park and national wildlife refuge systems are established and administered and –

(1) Nothing in this Act shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215) (16 U.S.C. 528-531).

(2) Nothing in this Act shall modify the restrictions and provisions of the Shipstead-Nolan Act (Public Law 539, Seventy-first Congress, July 10, 1930; 46 Stat. 1020), the Thyne-Blatnik Act (Public Law 733, Eightieth Congress, June 22, 1948; 62 Stat. 568), and the Humphrey-Thyne-Blatnik-Andresen Act (Public Law 607, Eighty-Fourth Congress, June 22, 1956; 70 Stat. 326), as applying to the Superior National Forest or the regulations of the Secretary of Agriculture.

(3) Nothing in this Act shall modify the statutory authority under which units of the national park system are created. Further, the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this Act shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the national park system in accordance with sections 1, 2, 3, and 4 of this title, the statutory authority under which the area was created, or any other Act of Congress which might pertain to or affect such area, including, but not limited to, the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 432 et seq.); section 3(2) of the Federal Power Act (16 U.S.C. 796(2)); and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.).

(b) Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this

Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

PROHIBITION OF CERTAIN USES

(c) Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

SPECIAL PROVISIONS

(d) The following special provisions are hereby made:

(1) Within wilderness areas designated by this Act the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.

(2) Nothing in this Act shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the United States Geological Survey and the United States Bureau of Mines to determine the mineral values, if any, that may be present; and the results of such surveys shall be made available to the public and submitted to the President and Congress.

Mineral leases, claims, etc. (3) Notwithstanding any other provisions of this Act, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the extent as applicable prior to September 3, 1964, extend to those national forest lands designated by this Act as "wilderness areas"; subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production, and use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and , in oil and gas leasing, discovery work, exploration, drilling, and production, as soon as they have served their purpose. Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights, all patents issued under the mining laws of the United States affecting national forest lands designated by this Act as wilderness areas shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the national forest rules and regulations, but each such patent shall reserve to the United States all title in or to the surface of the lands and products thereof, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this Act: Provided, That, unless hereafter specifically authorized, no patent within wilderness areas designated by this Act shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983. Mining claims located after September 3, 1964, within the boundaries of wilderness areas designated by this Act shall create no rights in excess of those rights which may be patented under the provisions of this subsection. Mineral leases, permits, and licenses covering lands within national forest wilderness areas designated by this Act shall contain such reasonable stipulations as may

be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this Act as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

Water resources and grazing. (4) Within wilderness areas in the national forests designated by this Act, **(1)** the President may, within a specific area and in accordance with such regulations as he may deem desirable, authorize prospecting for water resources, the establishment and maintenance of reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial; and **(2)** the grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.

(5) Other provisions of this Act to the contrary notwithstanding, the management of the Boundary Waters Canoe Area, formerly designated as the Superior, Little Indian Sioux, and Caribou Roadless Areas, in the Superior National Forest, Minnesota, shall be in accordance with regulations established by the Secretary of Agriculture in accordance with the general purpose of maintaining, without unnecessary restrictions on other uses, including that of timber, the primitive character of the area, particularly in the vicinity of lakes, streams, and portages: Provided, That nothing in this Act shall preclude the continuance within the area of any already established use of motorboats.

(6) Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

(7) Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(8) Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests.

STATE AND PRIVATE LANDS WITHIN WILDERNESS AREAS

Section 5.(a) In any case where State -owned or privately owned land is completely surrounded by national forest lands within areas designated by this Act as wilderness, such State or private owner shall be given such rights as may be necessary to assure adequate access to such State -owned or privately owned land by such State or private owner and their successors in interest, or the State -owned land or privately owned land shall be exchanged for federally owned land in the same State of approximately equal value under authorities available to the Secretary of Agriculture:

Transfers, restriction. Provided, however, That the United States shall not transfer to a State or private owner any mineral interests unless the State or private owner relinquishes or causes to be relinquished to the United States the mineral interest in the surrounded land.

(b) In any case where valid mining claims or other valid occupancies are wholly within a designated national forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.

Acquisition. (c) Subject to the appropriation of funds by Congress, the Secretary of Agriculture is authorized to acquire privately owned land within the perimeter of any area designated by this Act as wilderness if **(1)** the owner concurs in such acquisition or **(2)** the acquisition is specifically authorized by Congress.

GIFTS, BEQUESTS, AND CONTRIBUTIONS

Section 6.(a) The Secretary of Agriculture may accept gifts or bequests of land within wilderness areas designated by this Act for preservation as wilderness. The Secretary of Agriculture may also accept gifts or bequests of land adjacent to wilderness areas designated by this Act for preservation as wilderness if he has given sixty days advance notice thereof to the President of the Senate and the Speaker of the House of Representatives. Land

accepted by the Secretary of Agriculture under this section shall be come part of the wilderness area involved. Regulations with regard to any such land may be in accordance with such agreements, consistent with the policy of this Act, as are made at the time of such gift, or such conditions, consistent with such policy, as may be included in, and accepted with, such bequest.

(b) Authorization to accept private contributions and gifts The Secretary of Agriculture or the Secretary of the Interior is authorized to accept private contributions and gifts to be used to further the purposes of this Act.

ANNUAL REPORTS

Section 7. At the opening of each session of Congress, the Secretaries of Agriculture and Interior shall jointly report to the President for transmission to Congress on the status of the wilderness system, including a list and descriptions of the areas in the system, regulations in effect, and other pertinent information, together with any recommendations they may care to make.

APPROVED SEPTEMBER 3, 1964.

Legislative History:

House Reports: No 1538 accompanying H.R. 9070 (Committee on Interior & Insular Affairs) and No. 1829 (Committee of Conference).

Senate report: No. 109 (Committee on Interior & Insular Affairs). Congressional Record: Vol. 109 (1963):

- April 4, 8, considered in Senate.
- April 9, considered and passed Senate.
- Vol. 110 (1964): July 28, considered in House.
- July 30, considered and passed House, amended, in lieu of H.R. 9070
- August 20, House and Senate agreed to conference report.

PUBLIC LAW 99-68 [H.R. 1373]; July 19, 1985

PHILLIP BURTON WILDERNESS, CALIFORNIA

An Act to designate the wilderness in the Point Reyes National Seashore in California as the Phillip Burton Wilderness.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PHILLIP BURTON WILDERNESS.

16 USC 1132
note.

98 Stat. 1619.

(a) In recognition of Congressman Phillip 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 and specifically his tireless efforts which led to the enactment of the California Wilderness Act of 1984, the designated wilderness area of Point Reyes National Seashore, California as established pursuant to law, shall henceforth be known as the "Phillip Burton Wilderness".

(b) In order to carry out the provisions of this Act, the Secretary of the Interior is authorized and directed to provide such identification by signs, including, but not limited to changes in existing signs, materials, maps, markers, interpretive programs or other means as will adequately inform the public of the designation of the wilderness and the reason therefor.

(c) **REFERENCES**—Nothing in this Act shall affect the management of (or the application of any rule, regulation, or provision of law to) any area within the Point Reyes National Seashore, except that all references to the "Point Reyes Wilderness" or to "the wilderness in the Point Reyes National Seashore" which appear in any rule, regulation, provision of law or other official document shall hereafter be deemed to be references to the Phillip Burton Wilderness Area.

Appropriation
authorization.

(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Approved July 19, 1985.

LEGISLATIVE HISTORY — H.R. 1373:

HOUSE REPORT No 99-91 (Comm on Interior and Insular Affairs)

SENATE REPORT No 99-95 (Comm on Energy and Natural Resources)

CONGRESSIONAL RECORD, Vol 131 (1985)

Apr 2, considered and passed House

July 9, considered and passed Senate

Dated: November 9, 1999.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 99-30112 Filed 11-17-99; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Designation of Potential Wilderness as Wilderness, Point Reyes National Seashore

AGENCY: National Park Service, Interior

ACTION: Notice.

Public Law 94-567, approved October 20, 1976, designated 25,370 acres in Point Reyes National Seashore as Wilderness, and further identified 8,003 acres as potential wilderness additions in maps entitled "Wilderness Plan, Point Reyes National Seashore", numbered 612-90,000-B and dated September 1976. These maps showing the wilderness area and potential wilderness additions are on file at the headquarters of Point Reyes National Seashore, Point Reyes Station, California, 94956.

Section 3 of Public Law 94-567 provided a process whereby potential wilderness additions within the Point Reyes National Seashore would convert to designated wilderness upon publication in the *Federal Register* of a notice that all uses of the land, prohibited by the Wilderness Act (Pub. L. 88-577), have ceased.

The National Park Service has determined that all Wilderness Act prohibited activities on the following described designated potential wilderness additions have ceased. The lands are located in the Muddy Hollow, Abbotts Lagoon, and Limantour Area and are described on map 612-60, 189. Such lands are entirely in Federal ownership. Because such lands now fully comply with congressional direction in Section 3 of Public Law 94-567, this notice hereby effects the change in status of the lands in these areas to designated wilderness, totaling 1,752 acres, more or less. The map showing this change is on file at the headquarters of Point Reyes National Seashore, Point Reyes Station, California, 94956.

This notice hereby changes the total wilderness acreage within Point Reyes National Seashore to 27,122 acres. The potential wilderness additions remaining consist of 6,251 more or less. The remaining potential wilderness areas will remain as such until all uses conflicting with the provisions of the Wilderness Act have ceased.

Note that Congress in Public Law 99-68, approved on July, 1985, designated that the wilderness area of Point Reyes National Seashore, to be known as the "Phillip Burton Wilderness."

Dated: October 29, 1999.

Robert Stanton,

Director, National Park Service.

[FR Doc. 99-29779 Filed 11-17-99; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 9, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 219-5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ({202} 219-5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395-7316), within 30 days from the date of this publication in the *Federal Register*.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Shipyard Certification Records (29 CFR 1915.113(b)(1) and 1915.172(d)).

OMB Number: 1281-0220.

Frequency: On occasion; Quarterly; Annually.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 900.

Estimated Time Per Respondent: 3 to 20 minutes.

Total Burden Hours: 4461.

Total Annualized capital/startup costs: \$0.

Total annual costs (operating/maintaining systems or purchasing services): \$0.

Description: The Standard for shackles and hooks (29 CFR 1915.113(b)(1)) requires that all hooks for which no applicable manufacturer's recommendations are available shall be tested to twice their intended safe work load before they are initially put into use, and that the employer shall maintain a certification record. The standard for portable air receivers (29 CFR 1915.172(d)) requires that portable, unfired pressure vessels, not built to the code requirements of 1915.172(a), shall be examined quarterly by a competent person and that they be subjected yearly to a hydrostatic pressure test of one and one-half times the working pressure of the vessels. A certification record of these examinations and tests shall be maintained.

The information collection requirements contained in 29 CFR 1915.113(b)(1) and 29 CFR 1915.172(d) (shipyard certification records) ensures that employees properly inform employees about the condition of shackles and hooks, and portable air receivers and other unfired pressure vessels, in shipyards. The information collection requirements also verify that employers are in compliance with the standard. OSHA compliance officers may require employers to disclose the required certification records at the time of an inspection.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99-30120 Filed 11-17-99; 8:45 am]

BILLING CODE 4510-26-M

C

STATEMENT OF PRINCIPLES

STATEMENT OF PRINCIPLES

FEB 24 2010 10:30PM

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P. 2

Statement of Principles Regarding NEPA evaluation for Special Use Permit for Drakes Bay Oyster Company

- The Parties are NPS and Drakes Bay Oyster Company (DBOC). For the purposes of this document, DBOC consists of the owners of DBOC and its representatives.
- Parties will have at least one in-person meeting prior to public scoping. Prior to the initial meeting, NPS will advise DBOC of any scientific, technical, or other information that the NPS believes should be considered during the NEPA process. NPS agrees to consider in good faith any additional information DBOC believes is appropriate for consideration. If NPS determines that any of the information submitted by DBOC is not necessary or relevant to the NEPA process, NPS will explain its rationale in the scoping report, the NEPA documents, or the administrative record for the NEPA process. DBOC will endeavor to provide all such information to the NPS at this initial meeting.
- If the NPS needs information regarding DBOC's operations, DBOC will provide timely responses to NPS requests for such information.
- NPS, in cooperation with DBOC, will prepare a schedule for completing NEPA review. Such schedule will include specific target dates for scoping, public hearings (if appropriate), the release of the EA for public comment, the public comment period, and the issuance of the FONSI or the initiation of an EIS. If NPS determines that an EIS is necessary, the same coordination efforts set forth herein will also apply in the preparation of the EIS.
- NPS will consider DBOC's interests in applying for and receiving a special use permit in developing the purpose and need for the NEPA document.
- DBOC shall prepare a description of their operations for NEPA evaluation, which NPS shall consider in good faith. NPS will consult in good faith with DBOC on the purpose and need of the project as needed, particularly during impact analysis, to assist in improving the preferred alternative to avoid, mitigate or otherwise address any adverse impacts.
- After the National Academy of Sciences produces its first report (specific to Drakes Estero) and NPS and DBOC meet and confer in good faith regarding same, the NPS will begin preparing the those portions of the NEPA document concerning off-shore activities, including sections concerning the affected environment, alternatives, environmental consequences, and mitigation measures, unless otherwise agreed to by the Parties. Notwithstanding the foregoing, NPS may begin preparing those portions of the NEPA document concerning offshore activities that analyze air quality, cultural resources and the socioeconomic environment.
- NPS agrees to consult with DBOC in good faith in the design of any further scientific or technical studies to assist in NEPA evaluation of the project.
- As part of public scoping, DBOC may provide comments regarding proposed alternatives, and the NPS will consider such comments.
- DBOC may provide formal comments during the public comment period for the NEPA document.

FEB 24 2010 10:30PM

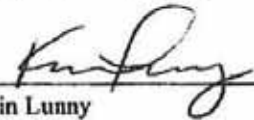
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p. 3

- DBOC will not be required to cover the cost of preparing the NEPA document. If there is litigation regarding NEPA compliance, it will not trigger the indemnification requirements set forth in the Special Use Permit.
- The Parties will exert best efforts to effectuate the principles set forth herein.
- The Parties will enter into a Memorandum of Understanding or similar agreement consistent with the principles set forth herein as soon as practicable. The NEPA actions contemplated by the principles set forth herein shall be initiated after the Parties enter into the Memorandum of Understanding or similar agreement. Notwithstanding the foregoing, NPS may initiate the contemplated NEPA actions if the Parties are unable to enter into a Memorandum of Understanding or similar agreement within sixty (60) days of the date of this Statement of Principles; provided, however that any such actions shall be consistent with this Statement of Principles and the Parties will continue to make best efforts to enter into a Memorandum of Understanding or similar agreement.

IT IS SO AGREED:

Drakes Bay Oyster Company

By: 
Kevin LunnyDated: 4/22/08

National Park Service

By: 
Jonathan B. Jarvis
Regional Director
Pacific West RegionDated: 4/17/2008

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D

RELEVANT AGENCY CORRESPONDENCE

- Letter from the Seashore, to Interested Party, regarding Public Scoping, dated 10/8/10
- Letter from the Seashore, to EPA, regarding Cooperating Agency Request, dated 10/14/10
- Letter from CCC, to the Seashore, regarding Cooperating Agency Response, dated 11/9/10
- Letter from USACE, to the Seashore, regarding Cooperating Agency Response, dated 11/16/10
- Letter from State Clearinghouse and Planning Unit, to Reviewing Agencies, regarding Notice of Intent, dated 11/17/10
- Letter from USFWS, to the Seashore, regarding Species List Request Response, dated 11/17/10
- Letter from OCRM, to CCC, regarding Request of the CCC to Review NPS SUP Application by DBOC for Aquaculture Operations, dated 3/30/2011
- Letter from the Seashore, to SHPO, regarding Notification of Intent to Use NEPA Process to Meet Section 106 Obligations at Pt. Reyes National Seashore, dated 4/1/11
- Letter from the Seashore, to SHPO, regarding Request for Concurrence, Determination of Eligibility, dated 4/5/11
- Letter from the Advisory Council on Historic Preservation, to the Seashore, regarding Scoping Response, dated 4/18/11
- Letter from the Seashore, to MMC, regarding Cooperating Agency Request, dated 6/2/11
- Letter from the Seashore, to SHPO, regarding Request for Concurrence, dated 7/8/11
- Letter from SHPO, to the Seashore, regarding Concurrence, dated 8/4/11
- Letter from the Seashore, to FIGR, regarding Notification of Intent to Use NEPA Process to Meet Section 106 Obligations at Pt. Reyes National Seashore, dated 8/10/11
- Letter from FIGR, to the Seashore, regarding Section 106, dated 8/29/11



United States Department of the Interior

NATIONAL PARK SERVICE

Point Reyes National Seashore
Point Reyes, California 94956

IN REPLY REFER TO:

L7617

October 8, 2010

Dear Interested Party:

The National Park Service (NPS) is beginning the preparation of an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) to evaluate a potential issuance of a Special Use Permit for commercial oyster operations within Drakes Estero at Point Reyes National Seashore. Public scoping is the first step to involve the public in the NEPA process. Scoping includes holding meetings (see page 2) and providing opportunities for the public to comment so that their concerns are identified early and the analysis is focused on important issues.

The NPS encourages comments on the draft purpose and need, and requests that the public identify topics and concerns that should be addressed in the EIS. Commenters are also encouraged to bring forward any new information that the NPS may not be aware of that would be of use in preparing the EIS.

Project Purpose and Need

Pursuant to Section 124 of Public Law 111-88, the Secretary of the Interior has the discretionary authority to issue a Special Use Permit for a period of 10 years to Drakes Bay Oyster Company (DBOC) for commercial harvesting and processing of shellfish at Point Reyes National Seashore. The existing Reservation of Use and Occupancy and associated Special Use Permit held by DBOC expire on November 30, 2012. DBOC has submitted a request for the issuance of a new permit upon expiration of the existing permit.

On behalf of the Secretary, the NPS will use the NEPA process to engage the public and evaluate the effects of continuing the commercial operation within the national park. The results of the NEPA process will be used to inform the decision of whether a new Special Use Permit should be issued to DBOC for a period of 10 years.

Project Objectives

- Manage natural and cultural resources to support their maximum protection, restoration, and preservation.
- Manage wilderness and potential wilderness areas to preserve the character and qualities for which they were designated.

- Engage a broad spectrum of the public and relevant agencies in the NEPA process.

Scoping Meetings

The National Park Service will be hosting three public meetings during the initial scoping phase of this process. The open house style meetings will be identical in format and are intended to gather comments from the public that will be used in shaping the EIS. The meetings are scheduled at the following locations:

Tuesday October 26, 2010, 6-8pm

Dance Palace Community Center
503 B Street
Point Reyes Station, CA 94965

Wednesday October 27, 2010, 6-8 pm

Multi-Purpose Room, Bay Model Visitor Center
2100 Bridgeway
Sausalito, CA 94965-1753

Thursday October 28, 2010, 6-8 pm

Community Room, REI Berkeley
1338 San Pablo Avenue
Berkeley, CA 94702

Public Comment

If you cannot attend one of the public scoping meetings or would like to provide comment in another form, you can still participate online or in writing. The preferred method for submitting comments is via the internet through the NPS Planning, Environment and Public Comment site at <http://parkplanning.nps.gov/pore>. From the main page, click on the Drakes Bay Oyster Company Special Use Permit EIS link, and then on the "Scoping Letter" link to comment. You may also mail or hand deliver comments to "DBOC SUP EIS c/o Superintendent, Point Reyes National Seashore, 1 Bear Valley Road, Point Reyes Station, CA 94956". Written comments will also be accepted at the public meetings.

The comment period will close 30 days after publication of the Notice of Intent to Prepare an EIS in the Federal Register and will be announced via press release and on the park's website (www.nps.gov/pore).

Comments will not be accepted by FAX, e-mail, or in any other way than those specified above. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to

withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Project timeline

- October/November 2010: Public Scoping
- Fall 2011: Draft EIS released with 60-day public review and comment period
- Summer 2012: Final EIS completed and released
- July 2012: Record of Decision signed

If you have questions regarding this process, please contact Outreach Coordinator Melanie Gunn at Point Reyes National Seashore at (415) 464-5162. We appreciate your participation in this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Cicely A. Muldoon". The signature is fluid and cursive, with a long horizontal stroke at the end.

Cicely A. Muldoon
Superintendent



United States Department of the Interior

NATIONAL PARK SERVICE

Point Reyes National Seashore
Point Reyes, California 94956

IN REPLY REFER TO:

L7617
(DBOC SUP EIS)

October 14, 2010

A copy of this form letter offering the opportunity to participate as a cooperating agency also was sent to USACE, CCC, NMFS, USFWS, CDFG, and SF Bay RWQCB on the same date.

Mr. Jared Blumenfeld, Regional Director
US Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dear Mr. Blumenfeld:

The National Park Service (NPS) is beginning the preparation of an Environmental Impact Statement (EIS) to evaluate a potential issuance of a Special Use Permit for commercial oyster operations within Drakes Estero at Point Reyes National Seashore. Pursuant to Section 124 of Public Law 111-88, the Secretary of the Interior has the discretionary authority to issue a special use permit for a period of 10 years to Drakes Bay Oyster Company (DBOC) for commercial harvesting and processing of shellfish at Point Reyes National Seashore. The existing Reservation of Use and Occupancy and associated special use permit held by DBOC will expire on November 30, 2012. DBOC has submitted a request for the issuance of a new permit upon expiration of the existing permit.

On behalf of the Secretary, the NPS will use the National Environmental Policy Act (NEPA) process to engage the public and evaluate the effects of continuing the commercial operation within the national park. The results of the NEPA process will be used to inform the decision of whether a new special use permit should be issued to DBOC for a period of 10 years.

In accordance with the NEPA PL 91-190 USC 4321, and the Council of Environmental Quality (CEQ) Regulations Section 1501.5 and 1501.6, the NPS is inviting the Environmental Protection Agency to be a cooperating agency in the new EIS process to provide information in your areas of technical expertise, which will assist the NPS in making a more informed decision. The NPS will be inviting several other government agencies to participate in the development of the EIS as cooperating agencies including the California Coastal Commission, California Department of Fish and Game, National Marine Fisheries Service, Regional Water Quality Control Board, US Army Corps of Engineers, and US Fish and Wildlife Service.

Please let us know by November 10, 2010 if you would like to participate as a Cooperating Agency in the development of the Drakes Bay Oyster Company Special Use Permit EIS by contacting Brannon Ketcham at Point Reyes National Seashore at (415) 464-5192 or by email at brannon_ketcham@nps.gov.

On October 8, 2010 the NPS announced the beginning of scoping for this EIS. The comment period will close 30 days from the publication of a Notice of Intent to Prepare an EIS in the Federal Register (anticipated for mid-October). Scoping allows the general public and interested groups and agencies the opportunity to participate early on in the range of alternatives and the issues to be considered for impact analysis as part of the EIS. It also gives them a chance to identify topics and concerns that should be addressed in the EIS. Finally it helps them bring forward any new information that the NPS may not be aware of that would be of useful in preparing the plan and EIS.

The National Park Service will be hosting three public meetings during the initial scoping phase of this process. The open house style meetings are intended to gather comments from the public that will be used in shaping the EIS. The meetings are scheduled for late October at the following locations:

Tuesday October 26, 2010, 6-8pm

Dance Palace Community Center
503 B Street
Point Reyes Station, CA

Wednesday October 27, 2010, 6-8 pm

Multi-Purpose Room, Bay Model Visitor Center
2100 Bridgeway
Sausalito, CA

Thursday October 28, 2010, 6-8 pm

Community Room, REI Berkeley
1338 San Pablo Avenue
Berkeley, CA

In addition, the NPS intends to convene a Cooperating Agency conference call during the public scoping period. We will be contacting Cooperating Agencies with meeting information. We anticipate that the discussions held during this meeting would be used to draft a Memorandum of Understanding (MOU) between our two agencies as to role and responsibilities of each.

If you have questions concerning the role of cooperating agencies, please contact Brannon Ketcham at (415) 464-5192. We appreciate your participation in this process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cicely A. Muldoon". The signature is fluid and cursive, with the first name "Cicely" and last name "Muldoon" clearly distinguishable.

Cicely A. Muldoon
Superintendent

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



November 9, 2010

Brannon Ketcham
Point Reyes National Seashore
Point Reyes Station, California 94956

**RE: Drakes Bay Oyster Company Special Use Permit EIS - Cooperating Agency
Invitation**

Dear Mr. Ketcham:

California Coastal Commission (Commission) staff received a letter from the National Park Service - Point Reyes National Seashore (NPS), dated October 14, 2010, which describes the intention of NPS to initiate the National Environmental Policy Act process and develop an Environmental Impact Statement (EIS) to evaluate the potential issuance of a Special Use Permit for commercial oyster operations within the Drakes Estero portion of Point Reyes National Seashore. This letter also extends an invitation to the Commission to formally participate as a cooperating agency in the development of this EIS.

Although Commission staff anticipates following the EIS development process closely and providing comments and input at appropriate opportunities, we respectfully decline this offer to participate as a cooperating agency. We will continue to be available to NPS staff to answer specific questions and offer clarification of relevant matters whenever NPS and other cooperating agencies determine that such input would be useful, however.

Thank you for your offer and please feel free to contact me at 415-904-5502 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads 'Cass Teufel'.

CASSIDY TEUFEL
Coastal Program Analyst

DOC129

REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
 1455 MARKET STREET
 SAN FRANCISCO, CALIFORNIA 94103-1398

NOV 16 2010

Regulatory Division

SUBJECT: File Number 2010-00116N

Ms. Cicely Muldoon
 Superintendent
 Point Reyes National Seashore
 1 Bear Valley Road
 Point Reyes Station, California 94956

Dear Ms. Muldoon:

This is in regard to the proposed Drakes Bay Oyster Company Special Use Permit and the development of the associated Environmental Impact Statement, pertaining to on-going aquaculture activities associated with Drakes Bay Oyster Company operations in Tomales Bay, Marin County, California.

All proposed work and/or structures extending bayward or seaward of the line on shore reached by: (1) mean high water (MHW) in tidal waters, or (2) ordinary high water in non-tidal waters designated as navigable waters of the United States, must be authorized by the Corps of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403). Additionally, all work and structures proposed in unfilled portions of the interior of diked areas below former MHW must be authorized under Section 10 of the same statute.

All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

The aquaculture activities are within our jurisdiction and a permit is required. Review of our files indicates that the Drakes Bay Oyster Company aquaculture operation does not have a current permit application or permit on file. The Corps advises that the Drakes Bay Oyster Company submit a permit application to ensure their activities comply with our regulations. Application for Corps authorization should be made to this office.

Drakes Bay Oyster Company should note that upon receipt of a properly completed application and plans, it may be necessary to advertise the work by issuing an agency comment solicitation letter or public notice for a period of 30 days.

RECEIVED	
Point Reyes National Seashore	
NOV 17 '10	
<input checked="" type="checkbox"/>	SUPT.
<input type="checkbox"/>	SCIENCE
<input type="checkbox"/>	SPEC. PK. USES
<input type="checkbox"/>	LAW ENFORC.
<input checked="" type="checkbox"/>	NAT. RES.
<input type="checkbox"/>	RANGE CONS.
<input type="checkbox"/>	FIRE MGT.
<input type="checkbox"/>	INTERR.
<input type="checkbox"/>	CULT. RES.
<input type="checkbox"/>	MAINT.
<input type="checkbox"/>	CONTRACTING
<input type="checkbox"/>	PERSONNEL
<input type="checkbox"/>	BUDGET
<input checked="" type="checkbox"/>	CENTRAL FILES

DOC129

-2-

If an individual permit is required, it will be necessary for Drakes Bay Oyster Company to demonstrate to the Corps that any proposed fill is necessary because there are no practicable alternatives, as outlined in the U.S. Environmental Protection Agency's Section 404(b)(1) Guidelines.

Nationwide Permit 48 for *Existing Commercial Shellfish Aquaculture Activities* authorizes certain activities provided specified conditions are met. A completed application will enable us to determine whether the activities are already authorized.

The Corps also suggests that Drakes Bay Oyster Company contact the Regional Water Quality Control Board, California Coastal Commission, and appropriate California Department of Fish and Game Office to ensure they review the project relative to their permitting requirements for activities that may impact aquatic resources.

We appreciate the opportunity to provide comments on the Drakes Bay Oyster Company Special Use Permit Environmental Impact Statement (EIS) and accept the National Park Service invitation to act as a cooperating agency in the preparation of the EIS. Should you have any questions regarding this matter, please call Bryan Matsumoto of our Regulatory Division at 415-503-6786. Please address all correspondence to the Regulatory Division and refer to the File Number at the head of this letter.

Sincerely,



Jane M. Hicks
Chief, Regulatory Division

Copy Furnished:

NMFS, Santa Rosa, CA
US FWS, Sacramento, CA
RWQCB, Oakland, CA
CA Coastal Commission, San Francisco, CA (Attn: Cassidy Teufel)
CA DFG, Yountville, CA

DOC128



Arnold Schwarzenegger
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Cathleen Cox
Acting Director

Notice of Intent

November 17, 2010

To: Reviewing Agencies

Re: Special Use Permit for Commercial Oyster Operations within Drakes Estero at Point Reyes National Seashore

SCH# 2010104004

Attached for your review and comment is the Notice of Intent (NOI) for the Special Use Permit for Commercial Oyster Operations within Drakes Estero at Point Reyes National Seashore draft Environmental Impact Statement (EIS).

Responsible agencies must transmit their comments on the scope and content of the NOI, focusing on specific information related to their own statutory responsibility, within 30 days of receipt of the NOI from the Lead Agency. This is a courtesy notice provided by the State Clearinghouse with a reminder for you to comment in a timely manner. We encourage other agencies to also respond to this notice and express their concerns early in the environmental review process.

Please direct your comments to:

Brannon Ketchan
National Park Service
1 Bear Valley Road
Point Reyes Station, CA 94956

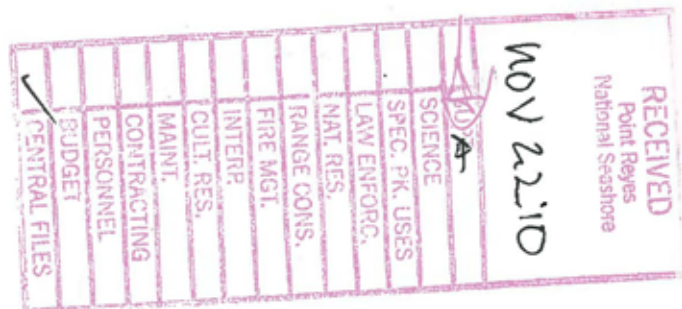
with a copy to the State Clearinghouse in the Office of Planning and Research. Please refer to the SCH number noted above in all correspondence concerning this project.

If you have any questions about the environmental document review process, please call the State Clearinghouse at (916) 445-0613.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Attachments
cc: Lead Agency



DOC128

Document Details Report State Clearinghouse Data Base

SCH# 2010104004
Project Title Special Use Permit Commercial Oyster Operations within Drakes Estero at Point Reyes National Seashore
Lead Agency National Park Service

Type NOI Notice of Intent
Description -Manage natural and cultural resources to support their maximum protection, restoration, and preservation.
 - Manage wilderness and potential wilderness areas to preserve the character and qualities for which they were designated.
 - Engage a broad spectrum of the public and relevant agencies in the NEPA process.

Lead Agency Contact

Name Brannon Ketcham
Agency National Park Service
Phone 415-464-5192 **Fax**
email
Address Point Reyes National Seashore
City Point Reyes Station **State** CA **Zip** 94956

Project Location

County Marin
City
Region
Cross Streets
Lat / Long
Parcel No.
Township **Range** **Section** **Base**

Proximity to:

Highways
Airports
Railways
Waterways Drakes Bay and Pacific Ocean
Schools
Land Use National Parks

Project Issues Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Coastal Zone; Cumulative Effects; Drainage/Absorption; Economics/Jobs; Fiscal Impacts; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Growth Inducing; Landuse; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Septic System; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian

Reviewing Agencies Resources Agency; Department of Boating and Waterways; California Coastal Commission; Department of Fish and Game, Region 3; Department of Parks and Recreation; Department of Water Resources; Caltrans, District 4; Regional Water Quality Control Board, Region 1; Department of Toxic Substances Control; Native American Heritage Commission; State Lands Commission

Date Received 10/26/2010 **Start of Review** 10/26/2010 **End of Review** 11/24/2010

Note: Blanks in data fields result from insufficient information provided by lead agency.



United States Department of the Interior
FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825



November 17, 2010

Document Number: 101117042657

Cicely Muldoon, Superintendent
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, CA 94956

Subject: Species List for Drakes Bay Oyster Company Special Use Permit EIS

Dear: Ms. Muldoon

We are sending this official species list in response to your November 17, 2010 request for information about endangered and threatened species. The list covers the California counties and/or U.S. Geological Survey 7½ minute quad or quads you requested.

Our database was developed primarily to assist Federal agencies that are consulting with us. Therefore, our lists include all of the sensitive species that have been found in a certain area *and also ones that may be affected by projects in the area*. For example, a fish may be on the list for a quad if it lives somewhere downstream from that quad. Birds are included even if they only migrate through an area. In other words, we include all of the species we want people to consider when they do something that affects the environment.

Please read Important Information About Your Species List (below). It explains how we made the list and describes your responsibilities under the Endangered Species Act.

Our database is constantly updated as species are proposed, listed and delisted. If you address proposed and candidate species in your planning, this should not be a problem. However, we recommend that you get an updated list every 90 days. That would be February 15, 2011.

Please contact us if your project may affect endangered or threatened species or if you have any questions about the attached list or your responsibilities under the Endangered Species Act. A list of Endangered Species Program contacts can be found at www.fws.gov/sacramento/es/branches.htm.

Endangered Species Division

U.S. Fish & Wildlife Service
Sacramento Fish & Wildlife Office
Federal Endangered and Threatened Species that Occur in
or may be Affected by Projects in the Counties and/or
U.S.G.S. 7 1/2 Minute Quads you requested
 Document Number: 101117042657
 Database Last Updated: April 29, 2010

Quad Lists

Listed Species

Invertebrates

- Haliotes cracherodii*
black abalone (E) (NMFS)
- Haliotes sorenseni*
white abalone (E) (NMFS)
- Speyeria zerene myrtleae*
Myrtle's silverspot butterfly (E)
- Syncaris pacifica*
California freshwater shrimp (E)

Fish

- Eucyclogobius newberryi*
tidewater goby (E)
- Oncorhynchus kisutch*
coho salmon - central CA coast (E) (NMFS)
Critical habitat, coho salmon - central CA coast (X) (NMFS)
- Oncorhynchus mykiss*
Central California Coastal steelhead (T) (NMFS)
Central Valley steelhead (T) (NMFS)
Critical habitat, Central California coastal steelhead (X) (NMFS)
- Oncorhynchus tshawytscha*
California coastal chinook salmon (T) (NMFS)

Amphibians

- Rana draytonii*
California red-legged frog (T)
Critical habitat, California red-legged frog (X)

Reptiles

- Caretta caretta*
loggerhead turtle (T) (NMFS)
- Chelonia mydas (Incl. agassizi)*
green turtle (T) (NMFS)
- Dermochelys coriacea*

leatherback turtle (E) (NMFS)

Lepidochelys olivacea

olive (=Pacific) ridley sea turtle (T) (NMFS)

Birds

Brachyramphus marmoratus

Critical habitat, marbled murrelet (X)

marbled murrelet (T)

Charadrius alexandrinus nivosus

Critical habitat, western snowy plover (X)

western snowy plover (T)

Diomedea albatrus

short-tailed albatross (E)

Pelecanus occidentalis californicus

California brown pelican (E)

Sternula antillarum (=Sterna, =albifrons) browni

California least tern (E)

Strix occidentalis caurina

northern spotted owl (T)

Mammals

Arctocephalus townsendi

Guadalupe fur seal (T) (NMFS)

Balaenoptera borealis

sei whale (E) (NMFS)

Balaenoptera musculus

blue whale (E) (NMFS)

Balaenoptera physalus

finback (=fin) whale (E) (NMFS)

Eubalaena (=Balaena) glacialis

right whale (E) (NMFS)

Eumetopias jubatus

Steller (=northern) sea-lion (T) (NMFS)

Physeter catodon (=macrocephalus)

sperm whale (E) (NMFS)

Plants

Alopecurus aequalis var. *sonomensis*

Sonoma alopecurus (E)

Chorizanthe robusta var. *robusta*

robust spineflower (E)

Chorizanthe valida

Sonoma spineflower (E)

Layia carnosa

beach layia (E)

Lupinus tidestromii

clover lupine [Tidestrom's lupine] (E)

Proposed Species

Amphibians

Rana draytonii

Critical habitat, California red-legged frog (PX)

Quads Containing Listed, Proposed or Candidate Species:

DRAKES BAY (485C)

County Lists

Marin County

Listed Species

Invertebrates

Haliotes cracherodii

black abalone (E) (NMFS)

Haliotes sorenseni

white abalone (E) (NMFS)

Icaricia icarioides missionensis

mission blue butterfly (E)

Incisalia mossii bayensis

San Bruno elfin butterfly (E)

Speyeria zerene myrteleae

Myrtle's silverspot butterfly (E)

Syncaris pacifica

California freshwater shrimp (E)

Fish

Acipenser medirostris

green sturgeon (T) (NMFS)

Eucyclogobius newberryi

critical habitat, tidewater goby (X)

tidewater goby (E)

Oncorhynchus kisutch

coho salmon - central CA coast (E) (NMFS)

Critical habitat, coho salmon - central CA coast (X) (NMFS)

Oncorhynchus mykiss

Central California Coastal steelhead (T) (NMFS)
Critical habitat, Central California coastal steelhead (X) (NMFS)
Critical habitat, Central Valley steelhead (X) (NMFS)

Oncorhynchus tshawytscha

California coastal chinook salmon (T) (NMFS)
Central Valley spring-run chinook salmon (T) (NMFS)
Critical habitat, winter-run chinook salmon (X) (NMFS)
winter-run chinook salmon, Sacramento River (E) (NMFS)

Amphibians

Ambystoma californiense

California tiger salamander, central population (T)

Rana draytonii

California red-legged frog (T)
Critical habitat, California red-legged frog (X)

Reptiles

Caretta caretta

loggerhead turtle (T) (NMFS)

Chelonia mydas (incl. agassizi)

green turtle (T) (NMFS)

Dermochelys coriacea

leatherback turtle (E) (NMFS)

Lepidochelys olivacea

olive (=Pacific) ridley sea turtle (T) (NMFS)

Birds

Brachyramphus marmoratus

Critical habitat, marbled murrelet (X)
marbled murrelet (T)

Charadrius alexandrinus nivosus

Critical habitat, western snowy plover (X)
western snowy plover (T)

Diomedea albatrus

short-tailed albatross (E)

Pelecanus occidentalis californicus
California brown pelican (E)

Rallus longirostris obsoletus
California clapper rail (E)

Sternula antillarum (=Sterna, =albifrons) browni
California least tern (E)

Strix occidentalis caurina
northern spotted owl (T)

Mammals

Arctocephalus townsendi
Guadalupe fur seal (T) (NMFS)

Balaenoptera borealis
sei whale (E) (NMFS)

Balaenoptera musculus
blue whale (E) (NMFS)

Balaenoptera physalus
finback (=fin) whale (E) (NMFS)

Eubalaena (=Balaena) glacialis
right whale (E) (NMFS)

Eumetopias jubatus
Critical Habitat, Steller (=northern) sea-lion (X) (NMFS)
Steller (=northern) sea-lion (T) (NMFS)

Megaptera novaeangliae
humpback whale (E) (NMFS)

Physeter catodon (=macrocephalus)
sperm whale (E) (NMFS)

Reithrodontomys raviventris
salt marsh harvest mouse (E)

Plants

Alopecurus aequalis var. *sonomensis*
Sonoma alopecurus (E)

Calochortus tiburonensis
Tiburon mariposa lily (T)

Castilleja affinis ssp. *neglecta*
Tiburon paintbrush (E)

Chorizanthe robusta var. *robusta*
robust spineflower (E)

Chorizanthe valida
Sonoma spineflower (E)

Delphinium bakeri
Baker's larkspur (E)
Critical habitat, Baker's larkspur (X)

Delphinium luteum
Critical habitat, yellow larkspur (X)
yellow larkspur (E)

Hesperolinon congestum
Marin dwarf-flax (=western flax) (T)

Layia carnosa
beach layia (E)

Lupinus tidestromii
clover lupine [Tidestrom's lupine] (E)

Streptanthus niger
Tiburon jewelflower (E)

Trifolium amoenum
showy Indian clover (E)

Proposed Species

Amphibians

Rana draytonii
Critical habitat, California red-legged frog (PX)

Key:

- (E) *Endangered* - Listed as being in danger of extinction.
- (T) *Threatened* - Listed as likely to become endangered within the foreseeable future.
- (P) *Proposed* - Officially proposed in the Federal Register for listing as endangered or threatened.
- (NMFS) Species under the Jurisdiction of the [National Oceanic & Atmospheric Administration Fisheries Service](#). Consult with them directly about these species.
- Critical Habitat* - Area essential to the conservation of a species.
- (PX) *Proposed Critical Habitat* - The species is already listed. Critical habitat is being proposed for it.
- (C) *Candidate* - Candidate to become a proposed species.
- (V) Vacated by a court order. Not currently in effect. Being reviewed by the Service.
- (X) *Critical Habitat* designated for this species

Important Information About Your Species List**How We Make Species Lists**

We store information about endangered and threatened species lists by U.S. Geological Survey 7½ minute quads. The United States is divided into these quads, which are about size of San Francisco.

The animals on your species list are ones that occur within, **or may be affected by** projects within, the quads covered by the list.

- Fish and other aquatic species appear on your list if they are in the same watershed as your quad or if water use in your quad might affect them.
- Amphibians will be on the list for a quad or county if pesticides applied in that area may be carried to their habitat by air currents.
- Birds are shown regardless of whether they are resident or migratory. Relevant birds on the county list should be considered regardless of whether they appear on a quad list.

Plants

Any plants on your list are ones that have actually been observed in the area covered by the list. Plants may exist in an area without ever having been detected there. You can find out what's in the surrounding quads through the California Native Plant Society's online [Inventory of Rare and Endangered Plants](#).

Surveying

Some of the species on your list may not be affected by your project. A trained biologist and/or botanist, familiar with the habitat requirements of the species on your list, should determine whether they or habitats suitable for them may be affected by your project. We recommend that your surveys include any proposed and candidate species on your list. See our [Protocol](#) and [Recovery Permits](#) pages.

For plant surveys, we recommend using the [Guidelines for Conducting and Reporting Botanical Inventories](#). The results of your surveys should be published in any environment documents prepared for your project.

Your Responsibilities Under the Endangered Species Act

All animals identified as listed above are fully protected under the Endangered Species Act 1973, as amended. Section 9 of the Act and its implementing regulations prohibit the take of a federally listed wildlife species. Take is defined by the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any such animal.

Take may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or shelter (50 CFR §17.3).

Take incidental to an otherwise lawful activity may be authorized by one of two procedures:

- If a Federal agency is involved with the permitting, funding, or carrying out of a project that may result in take, then that agency must engage in a formal [consultation](#) with the Service.

During formal consultation, the Federal agency, the applicant and the Service work together to avoid or minimize the impact on listed species and their habitat. Such consultation would result in a biological opinion by the Service addressing the anticipated effect of the project on listed proposed species. The opinion may authorize a limited level of incidental take.

- If no Federal agency is involved with the project, and federally listed species may be taken as part of the project, then you, the applicant, should apply for an incidental take permit. The Service may issue such a permit if you submit a satisfactory conservation plan for the species that would be affected by your project.

Should your survey determine that federally listed or proposed species occur in the area and are likely to be affected by the project, we recommend that you work with this office and the California Department of Fish and Game to develop a plan that minimizes the project's direct and indirect impacts to listed species and compensates for project-related loss of habitat. You should include the plan in any environmental documents you file.

Critical Habitat

When a species is listed as endangered or threatened, areas of habitat considered essential to its conservation may be designated as critical habitat. These areas may require special management considerations or protection. They provide needed space for growth and normal behavior; food, water, air, light, other nutritional or physiological requirements; cover or shelter; and sites for breeding, reproduction, rearing of offspring, germination or seed dispersal.

Although critical habitat may be designated on private or State lands, activities on these lands are not restricted unless there is Federal involvement in the activities or direct harm to listed wildlife.

If any species has proposed or designated critical habitat within a quad, there will be a separate line for this on the species list. Boundary descriptions of the critical habitat may be found in the Federal Register. The information is also reprinted in the Code of Federal Regulations (50 CFR 17.95). See our [Map Room](#) page.

Candidate Species

We recommend that you address impacts to candidate species. We put plants and animals on our candidate list when we have enough scientific information to eventually propose them for listing as threatened or endangered. By considering these species early in your planning process you may be able to avoid the problems that could develop if one of these candidates was listed before the end of your project.

Species of Concern

The Sacramento Fish & Wildlife Office no longer maintains a list of species of concern. However, various other agencies and organizations maintain lists of at-risk species. These lists provide essential information for land management planning and conservation efforts [More info](#)

Wetlands

If your project will impact wetlands, riparian habitat, or other jurisdictional waters as defined by section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act, you will need to obtain a permit from the U.S. Army Corps of Engineers. Impacts to wetland habitats require site specific mitigation and monitoring. For questions regarding wetlands, please contact Mark Littlefield of this office at (916) 414-6580.

Updates

Our database is constantly updated as species are proposed, listed and delisted. If you address proposed and candidate species in your planning, this should not be a problem. However, we recommend that you get an updated list every 90 days. That would be February 15, 2011.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

MAR 30 2011

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, California 94105-5200

Re: Request of the California Coastal Commission to Review National Park Service
Special Use Permit Application by Drakes Bay Oyster Company for Aquaculture
Operations

Dear Mr. Douglas:

Thank you for the California Coastal Commission's (CCC) request to review an application by Drakes Bay Oyster Company (DBOC) to the National Park Service for a Special Use Permit within the Drake's Estero portion of Point Reyes National Seashore. CCC requested the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management's (OCRM) approval to review the application as an unlisted "federal license or permit activity" under Section 307 of the Coastal Zone Management Act (CZMA)¹ and NOAA's implementing regulations at 15 C.F.R. § 930.54.

For the reasons stated below, OCRM approves the CCC's request to review the National Park Service Special Use Permit for federal consistency with the federally approved California Coastal Management Program, based on OCRM's determination that the activity, if permitted, would have a reasonably foreseeable effect on coastal uses or resources of the California coastal zone. Also, as discussed below, OCRM has determined that the threshold issues raised by DBOC are not persuasive. Therefore, DBOC must prepare and submit to the CCC a certification that the activity will be conducted consistent with the federally approved enforceable policies of the California Coastal Management Program, including the submission of necessary data and information required by 15 C.F.R. § 930.58. The National Park Service may not issue the Special Use Permit until either the CCC concurs with the consistency certification or the CCC's concurrence is presumed.² OCRM's approval of the CCC's request to review the Special Use Permit does not address whether the activity is consistent with the California Coastal Management Program. Rather, OCRM's approval merely authorizes the CCC's review under Section 307(c)(3)(A) of the CZMA and NOAA's regulations at 15 C.F.R. part 930, subpart D.

¹ 16 U.S.C. § 1456.

² The CCC's concurrence is presumed if the CCC does not respond within six months from receipt of the original Federal agency notice to the CCC or within 3 months from receipt of DBOC's consistency certification whichever period terminates last. 15 C.F.R. § 930.54(e).



BACKGROUND

States with federally approved coastal management programs list in their programs federal license or permit activities that are subject to the state's review under the federal consistency requirement of Section 307 of the CZMA.³ An "unlisted activity" is an activity that requires a federal license or permit, but is either: (1) not listed in the state's coastal management program; or (2) is listed, but the proposed project is located outside the state's coastal zone and the state has not described a geographical location outside its coastal zone where consistency applies.⁴ For unlisted activities in or outside the coastal zone, the state must notify the applicant, the relevant federal agency, and OCRM that it intends to review the activity. A state must make this notification within 30 days of receiving notice of the license or permit application; otherwise, a state waives its right to review the unlisted activity.⁵ The waiver does not apply where the state office charged with implementing an approved coastal management program does not receive notice of the application.

OCRM must either approve or decline to allow a state's review of an unlisted activity for consistency. The applicant and federal agency have fifteen days from receipt of a state's request to provide comments to OCRM. OCRM will make a decision usually within 30 days of receipt of a state's request, although NOAA's regulations allow for extensions.

In reviewing a state's request to review an unlisted activity, the sole basis for OCRM's decision will be whether the proposed activity will have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone.⁶ The federal agency may not authorize the activity unless OCRM denies the state's request or, if OCRM approves the state's request, the state concurs with the applicant's consistency certification.⁷ If the state objects to the consistency certification and the applicant appeals the state's objection to the Secretary of Commerce, pursuant to 15 C.F.R. Part 930, subpart H, and the Secretary overrides the state's objection, then the federal agency may authorize the activity.

THE CCC'S REQUEST TO REVIEW DBOC'S SPECIAL USE PERMIT APPLICATION AS AN UNLISTED ACTIVITY

DBOC has applied to the National Park Service for a Special Use Permit to extend its existing aquaculture operation for ten years, taking effect on November 30, 2012. A special use permit for aquaculture operations is not listed by the CCC in the California Coastal Management Program as a federal license or permit activity requiring consistency review. Therefore, to review the permit application as an unlisted activity, the CCC must obtain OCRM's approval in accordance with 15 C.F.R. § 930.54. That regulation requires that, in order to approve the CCC's request, OCRM must find that the license or permit activity would have reasonably foreseeable effects on any coastal resources or uses of the state's coastal zone.⁸

³ See 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.53(a).

⁴ See 15 C.F.R. §§ 930.53, 930.54.

⁵ 15 C.F.R. § 930.54(a)(1).

⁶ 15 C.F.R. § 930.54(c).

⁷ 15 C.F.R. § 930.54(d).

⁸ 15 C.F.R. § 930.54(c).

On October 12, 2010, the CCC received a letter from Point Reyes National Seashore Park Superintendent Cicely Muldoon stating that the National Park Service was beginning the preparation of an environmental impact statement (EIS) to evaluate the potential issuance of a Special Use Permit for extending the operations of DBOC. OCRM received the CCC's unlisted activity request on November 10, 2010.⁹ The CCC met the requirement of 15 C.F.R. § 930.54(c) that a state's request to review an unlisted activity review be made with OCRM within 30 days of notice of the permit application.¹⁰ OCRM extended its review period to April 1, 2011, pursuant to 15 C.F.R. § 930.54(c).

In order to review the National Park Service's issuance of the Special Use Permit to DBOC, the CCC must show that the Special Use Permit has reasonably foreseeable effects on any coastal resources or uses of the California coastal zone. The CCC's request to OCRM to review the Special Use Permit alleges the following reasonably foreseeable coastal effects:

- Reduction in eelgrass coverage due to shading from oyster racks and changes in substrate composition;
- Loss of eelgrass due to propeller cuts and anchor placement/removal associated with the use of motorized aquaculture vessels;
- Large scale filtration of estero waters and removal of plankton by non-native cultivated shellfish;
- Reduction in shorebird foraging habitat through the use of intertidal areas for the placement of bottom culture shellfish bags;
- Introduction, spread, and propagation of invasive species; and
- Disturbances to harbor seals due to the operation of motorized vessels and the placement, maintenance, and removal of oyster and clam grow-out bags in inter-tidal sand bar areas.¹¹

Comments on the CCC's request were received from the National Park Service, Corey S. Goodman, Ph.D., Drakes Bay Oyster Company, the U.S. Department of the Interior's Office of the Solicitor, the National Parks Conservation Association, Environmental Action Committee of West Marin County, and the Alliance for Sustainable Agriculture. The CCC supplemented its initial findings of reasonably foreseeable effects,¹² and DBOC supplemented its response with additional information.¹³

DBOC's comments in opposition to the CCC's request assert the following arguments:

⁹ Letter from Peter Douglas, Executive Director, CCC, to Donna Wieting, Acting Director, OCRM (Nov. 10, 2011).

¹⁰ See 15 C.F.R. § 930.54(c).

¹¹ Letter from Peter Douglas, Executive Director, CCC, to Donna Wieting, Acting Director, OCRM (Nov. 10, 2011).

¹² Letter from Peter Douglas, Executive Director, CCC, to Donna Wieting, Acting Director, OCRM (Jan. 13, 2011).

¹³ Letter from Kevin and Nancy Lunny, DBOC, to Dr. Jane Lubchenco, Administrator, NOAA, and Donna Wieting, Acting Director, OCRM (Jan 13, 2011).

1. That under the provisions of Pub. L. 111-88, the CCC cannot review DBOC's application for a Special Use Permit for federal consistency under the CZMA. DBOC asserts there can be no interference with the Secretary of the Interior's discretion to approve or deny the DBOC Special Use Permit authorized by Pub. L. 111-88, and that federal consistency review could jeopardize the timeline set forth in Pub. L. 111-88.¹⁴
2. The CCC's request to review the activity is inconsistent with the provisions of the Marin County Local Coastal Program that governs the area where DBOC operates.¹⁵
3. The appropriate baseline for determining whether the Special Use Permit has reasonably foreseeable coastal effects includes DBOC's existing operations, so that OCRM's review is limited to whether new operations, not existing operations, will have reasonably foreseeable coastal effects. DBOC also contends that the CCC has failed to demonstrate new coastal effects from DBOC's new operations.¹⁶
4. The CCC failed to demonstrate that there are reasonably foreseeable coastal effects from the activities that would be authorized by the Special Use Permit, in part because of the CCC's reliance on flawed science in its request to OCRM.¹⁷

RESPONSE TO COMMENTS

As discussed below, each of DBOC's arguments to the CCC's request lacks merit. The CCC's ability to request review of the Special Use Permit under the CZMA, and OCRM's authority to consider the CCC's request, were not affected by Congress's grant of discretionary authority to issue a permit to DBOC; the Marin County Local Coastal Program also does not restrict the CCC's authority to review the Special Use Permit; the CZMA and NOAA's implementing regulations are not limited to new coastal effects; and the CCC has met its burden to demonstrate that the Special Use Permit will have reasonably foreseeable effects on the uses or resources of the California coastal zone.

1. Public Law 111-88

DBOC argues that its proposal for a Special Use Permit is not subject to federal consistency review by the CCC, based upon legislation enacted in 2009 authorizing the Department of the Interior to issue the Permit "notwithstanding any other provision of law." Section 124 of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, provides as follows:

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

¹⁴ Letter from Kevin and Nancy Lunny, DBOC, to Dr. Jane Lubchenco, Administrator, NOAA, and Donna Wieting, Acting Director, OCRM 2-4 (Dec. 1, 2010).

¹⁵ *Id.* at 5.

¹⁶ Letter from Kevin and Nancy Lunny, DBOC, to Dr. Jane Lubchenco, Administrator, NOAA, and Donna Wieting, Acting Director, OCRM 3-4 (Jan 13, 2011).

¹⁷ Letter from Kevin and Nancy Lunny, DBOC, to Dr. Jane Lubchenco, Administrator, NOAA, and Donna Wieting, Acting Director, OCRM 6-9 (Dec. 1, 2010).

*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 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. Nothing in this section shall be construed to have any application to any location other than Point Reyes National Seashore; nor shall anything in this section be cited as precedent for management of any potential wilderness outside the Seashore.*¹⁸

According to both DBOC and the National Park Service, this legislation was in response to limitations on the Service's ability to authorize the continued operation of the DBOC facility beyond November 30, 2012. Specifically, the National Park Service had taken the position that once the Reservation of Use and Occupancy Agreement expired on November 30, 2012, continued authorization of DBOC's activities in Drakes Estero was not permissible under the Point Reyes Wilderness Act, Wilderness Act, National Park Service Organic Act, and applicable National Park Service Management Policies.¹⁹

In response, Congress enacted Section 124 of the 2010 Appropriations Act for the Department of the Interior. This provision was first offered as an amendment by Senator Dianne Feinstein, during consideration of the bill by the Senate Committee on Appropriations. As initially proposed, the Secretary of the Interior was "directed" to extend the existing authorization for an additional 10 years.²⁰ Senator Feinstein later offered an amendment to this language when the bill reached the Senate floor for consideration. The amendment, which passed by voice vote, closely approximated the version that ultimately became law and provided that the Secretary of the Interior is "authorized" to issue a new 10 year permit.²¹ The final version was agreed to in Conference without significant changes. The Conference Report noted, however, that the final language modified language included by the Senate, "providing the Secretary with discretion to issue a special use permit to Drake's Bay Oyster Company...."²²

Whether CZMA review is allowed depends upon the reach of the phrase "notwithstanding any other provision of law," within Section 124. Case law suggests that the reach of such language varies. Consideration must be given to whether Congress intended the phrase to require a federal agency to disregard all otherwise applicable laws.²³ Typically, such language serves to supercede only "conflicting" statutes. Additionally, when two statutes are capable of

¹⁸ Department of the Interior, Environment, and Related Agencies Appropriations Act of 2010, Pub. L. 111-88, 123 Stat. 2904, 2932 (Oct. 30, 2009).

¹⁹ National Park Service, *Clarification of Law, Policy and Science on Drakes Estero* (Sept. 18, 2007) (unpublished white paper).

²⁰ S. Rep. No. 111-38 at 27 and 48 (2009).

²¹ Cong. Rec. S9773 (Sept. 24, 2009).

²² Conf. Rep. No. 111-316 at 107 (Oct. 28, 2009).

²³ *Oregon Natural Resources Council v. Thomas*, 92 F.3d 792, 797 (9th Cir. 1996).

coexistence, courts will regard each as effective and limit any finding of implied repeal to the minimum extent necessary.²⁴

In light of established rules of statutory construction and the legislative history of Section 124, OCRM does not believe that Section 124 bars the CCC from reviewing the permit application for federal consistency. This interpretation is consistent with the plain language of the statute. The statute does not mandate issuance of a permit. Rather, it simply “authorizes” the National Park Service to issue a new permit if, in the exercise of its discretion, it chooses to do so. That discretion is informed by other environmental reviews conducted under other statutes. To eliminate the application of these statutes, including the CZMA, would deprive the National Park Service of the information it would need to make an informed decision. This interpretation avoids the implied repeal of other applicable statutes, allowing relevant statutes such as the CZMA to have continued application.

This interpretation is also consistent with the legislative history giving rise to this provision, both as set forth in the evolution of the statute and as expressly understood by both the National Park Service and DBOC. Section 124 responds to the National Park Service’s belief that it lacked the authority to authorize the continued operation of the facility under the Point Reyes Wilderness Act, Wilderness Act, National Park Service Organic Act, and applicable National Park Service Management Policies. The purpose of the legislation was to vest the Park Service with the authority to issue a new permit, notwithstanding these existing authorities.

Finally, this interpretation is consistent with the actions of both DBOC and the National Park Service, subsequent to the enactment of Section 124. In correspondence with OCRM, the National Park Service has indicated that, in its view, federal consistency review is required on the permit, notwithstanding Section 124. Regarding the application of other environmental requirements, the National Park Service has determined that its review of the permit application is subject to the requirements of the National Environmental Policy Act (NEPA). DBOC has tacitly concurred, and is preparing the appropriate environmental analyses.

DBOC asserts that the granting of approval to the CCC to review its application for a Special Use Permit could create a timeline conflict with the statutorily mandated term of authorization for the Special Use Permit specified in Section 124, which states that the Permit may begin on November 30, 2012. Although the State’s federal consistency reviews must be completed within six months of the submission of a consistency certification,²⁵ DBOC asserts that the CZMA six-month review timeline could still cause the November 30, 2012, issue date for the Special Use Permit to be missed if the CCC delays the start of the CZMA time clock by requiring that DBOC first submit the environmental impact statement developed under the NEPA as “necessary data and information.”²⁶

²⁴ *In re Glacier Bay*, 944 F.2d 577, 582 (9th Cir. 1991) (quoting *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155 (1976); *Silver v. New York Stock Exchange*, 373 U.S. 341, 357 (1963)).

²⁵ See 15 C.F.R. § 930.62(a).

²⁶ Letter from Kevin and Nancy Lunny, DBOC, to Dr. Jane Lubchenco, Administrator, NOAA, and Donna Wieting, Acting Director, OCRM 4 (Dec. 1, 2010).

OCRM finds that DBOC's timeline argument is without merit. DBOC's argument about the potential delay that could occur if the CCC requires that DBOC submit the environmental impact statement as part of the federal consistency review is unfounded because NEPA documents are not included in the CCC's list of "necessary data and information" as part of the California Coastal Management Program. In order for the CCC to delay the start of the CZMA time clock by requiring the submission of a NEPA documents as "necessary data and information," the CCC would have to have those specific information requirements as part of the California Coastal Management Program.²⁷ Moreover, while the review timeframe under the CZMA is independent of other federal statutes, including Section 124, it would not constrain the Secretary of the Interior from completing the review of the application for the Special Use Permit. The Secretary could issue the permit conditioned upon the completion of other federal requirements. This is something that federal permitting agencies frequently do, and this practice is consistent with the CZMA and NOAA's implementing regulations.

2. *Marin County Local Coastal Program*

DBOC argues that the Marin County Local Coastal Program governs the area that would be subject to the Special Use Permit, and that the local coastal program precludes the CCC's review. The local program states: "Existing mariculture operations are encouraged and should be permitted to continue in the parks. . . . *New* mariculture activities should be subject to review by the Coastal Commission."²⁸ According to DBOC, the local coastal program removes the CCC's ability to review its Special Use Permit because it is not a "new" mariculture operation.

OCRM finds that DBOC has misconstrued the delineation of authority between local coastal programs and the CCC. While the certification of local coastal programs provides those programs with exclusive permitting authority for certain types of activities, nothing in the California Coastal Management Program confers authority on local programs to conduct federal consistency reviews. Nor do the local programs determine the scope of the CCC's federal consistency authority. The CCC retains that exclusive authority for federal consistency and does not rely on local plan policies for its reviews.²⁹

3. *Environmental Baseline*

DBOC argues that in evaluating the CCC's request to review the Special Use Permit as an unlisted activity OCRM may only consider whether *new* coastal effects are reasonably foreseeable.³⁰ Coastal effects resulting from existing operations are, according to DBOC, inappropriate in determining whether the Special Use Permit will have reasonable foreseeable coastal effects. In making this argument, DBOC notes that its operations

²⁷ See 15 C.F.R. § 930.58.

²⁸ Marin County Local Program, Unit II amended, p.62 (Dec. 9, 1980) (emphasis added).

²⁹ Letter from Peter Douglas, Executive Director, CCC, to Charles Ehler, Acting Director, OCRM 1 (May 12, 2002).

³⁰ Letter from Kevin and Nancy Lunny, DBOC, to Dr. Jane Lubchenco, Administrator, NOAA, and Donna Wieting, Acting Director, OCRM 3 (Jan 13, 2011).

have been conducted since the 1930s, and that the Special Use Permit would have the effect of reauthorizing its existing authorization, which is about to expire, and would not authorize DBOC to conduct new operations. DBOC contends that OCRM is required to establish a “baseline” against which to measure the alleged impacts of the proposed activity, and that the assessment of reasonably foreseeable effects must be limited to those which go beyond existing operations.³¹ DBOC further claims that the CCC “has not carried forward its burden to identify *any* new coastal effects.”³²

OCRМ disagrees. The term “coastal effects,” as defined in NOAA’s regulations, means: “*any* reasonably foreseeable effect on *any* coastal use or resource.”³³ The term includes: “both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance but are still reasonably foreseeable.”³⁴ “Indirect effects” include those “resulting from the incremental impact of the activity when added to other past, present, and reasonably foreseeable actions regardless of what person(s) undertake(s) such actions.”³⁵ Thus, NOAA’s regulations explicitly require consideration of all coastal effects, not simply future effects. As a result, there is no requirement to establish an environmental baseline from which new effects must be determined.

4. *Reasonably Foreseeable Coastal Effects*

Finally, DBOC argues that the CCC has failed to demonstrate that the Special Use Permit has any reasonably foreseeable coastal effects.

DBOC first alleges that the CCC has applied the incorrect standard in determining effects.³⁶ Rather than considering “reasonably foreseeable” coastal effects as required under NOAA regulations, the CCC purportedly uses a different standard, examining whether coastal effects resulting from the Special Use Permit are “reasonably expected” and result in “potentially significant impacts.” Although the CCC did not use the same phrasing as that used in NOAA’s regulations, it is more importantly relevant that OCRM will employ the regulatory standard of reasonable foreseeable coastal effects regardless of the terminology used by the CCC. Under the CZMA and NOAA’s regulations, if there are any reasonably foreseeable coastal effects, then there is authority for federal consistency review by the CCC.

DBOC also contends that the CCC has failed to demonstrate reasonably foreseeable coastal effects because its analysis is based on scientific claims that have been disproven, discredited, or withdrawn. According to DBOC, the claims made by the CCC regarding coastal effects are based on flawed information that has been withdrawn based on a

³¹ *Id.*

³² *Id.* at 3-4 (emphasis in original).

³³ 15 C.F.R. § 930.11(g) (emphasis added).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Letter from Kevin and Nancy Lunny, DBOC, to Dr. Jane Lubchenco, Administrator, NOAA, and Donna Wieting, Acting Director, OCRM 6 (Dec. 1, 2010).

National Academy of Sciences (NAS) review of scientific information used by the National Park Service.³⁷ DBOC's argument is based on the findings of the NAS,³⁸ which in many respects are in sharp contrast to the assertions made by the CCC.

OCRM agrees that parts of the CCC's original request were predicated upon discredited information. Not only did the NAS reach conclusions contrary to some of those presented by the CCC, it also discredited the sources that the CCC relies on. However, OCRM also finds that DBOC's criticism is incomplete, and fails to adequately address all all coastal effects asserted by the CCC.

In examining the CCC's request, OCRM considers whether there are reasonably foreseeable effects to uses or resources of the California coastal zone from the authorized activity. As explained previously, NOAA's regulations define the term "coastal effects" broadly to mean "any reasonably foreseeable effect on any coastal use or resource" and to "include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable."³⁹ The term "any coastal use or resource" includes:

public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects...biological or physical resources that are found within a State's coastal zone on a regular or cyclical basis...air, tidal and nontidal wetlands, ocean waters, *estuaries*, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance.⁴⁰

It is important to note that the significance of coastal effects is not determinative; the CCC only needs to show that any coastal effect is reasonably foreseeable. OCRM finds that there are reasonably foreseeable coastal effects associated with the mariculture operations that would be authorized under the Special Use Permit for DBOC. The NAS report, which DBOC relies on in refuting the CCC, states:

Oyster mariculture necessarily has ecological consequences in Drakes Estero as in other lagoons and estuaries, the magnitude and significance of which vary with the intensity of the culturing operations. These effects derive from two different sources: the presence of and biological activity of the oysters and the activities of the culturists.⁴¹

³⁷ *Id.* at 6-7.

³⁸ See The National Academy of Sciences, *Shellfish Mariculture in Drakes Estero* (2009).

³⁹ 15 C.F.R. § 930.11(g).

⁴⁰ 15 C.F.R. § 930.11(b) (emphasis added).

⁴¹ The National Academy of Sciences, *Shellfish Mariculture in Drakes Estero*, at p. 2 (2009). It is noted that DBOC has previously acknowledged these effects from its operations. Included in DBOC's response to the CCC's unlisted activity review request is Attachment J, a November 14, 2008, letter from Kevin Lunny to the CCC regarding a Consent Cease & Desist Order, which provides information as to how DBOC addresses various effects

In addition to the more easily determined coastal effects that would result from mariculture operations in an estuary—including the basic effect on the estuary itself and the company's activities, both of which satisfy the regulatory standard—the CCC has provided an evidentiary basis for concluding that there is at least one reasonably foreseeable negative environmental impact from DBOC's activities.⁴² Specifically, OCRM finds that the introduction, spread, and propagation of invasive species is a reasonably foreseeable coastal effect. The NAS found that the oysters and clams cultured in Drakes Estero are nonnative species that have some risk of establishing self-sustaining populations. Although the oyster farm imports larvae and spat that meet certification requirements as specific-pathogen free, that does not eliminate the possibility of the transmission of pathogens. The shells, racks and other structures used in the mariculture operations already serve as hard surfaces that would not otherwise be available for a nonnative invasive tunicate, which increases the potential for the spreading of this invasive species.⁴³

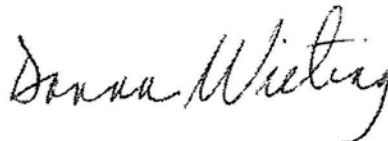
Therefore, OCRM finds that the risk associated with the use of nonnative species in the estuary is sufficient for the CCC to establish that there is a reasonably foreseeable effect on the coastal resources and uses of the California coastal zone.

CONCLUSION

OCRM approves the CCC's request to review, for consistency with its federally approved California Coastal Management Program, the National Park Services's Special Use Permit for DBOC's operations in Drake's Estero. DBOC's arguments regarding limitations on the CCC's authority to review the Special Use Permit are unpersuasive. OCRM also finds that there are reasonably foreseeable coastal effects associated with the mariculture operations that would be authorized under the Special Use Permit for DBOC. As such, the CCC's request for approval to review the Special Use Permit application of DBOC is granted.

Please direct any questions in regards to this matter to David Kaiser, OCRM Senior Policy Analyst, at David.Kaiser@noaa.gov 603-862-2719; or Kerry Kehoe, OCRM Federal Consistency Specialist, at Kerry.Kehoe@noaa.gov 301-563-1151.

Sincerely,



Donna Wieting
Acting Director
Office of Ocean and Coastal Resource Management

associated with the mariculture operations.

⁴² It is important to reiterate that a negative environmental impact is not necessary to find a reasonably foreseeable coastal effect under the CZMA and NOAA's regulations.

⁴³ The National Academy of Sciences, *Shellfish Mariculture in Drakes Estero*, at p. 5 (2009).

cc: Kevin Lunny, DBOC
Cicely Muldoon, NPS



United States Department of the Interior

NATIONAL PARK SERVICE

Point Reyes National Seashore
Point Reyes, California 94956

IN REPLY REFER TO:

H4217

April 1, 2011

Ms. Jenan Saunders
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Re: Notification of intent to use National Environmental Policy Act (NEPA) process to meet §106 Obligations at Pt. Reyes National Seashore

Dear Ms. Saunders,

The National Park Service (NPS) was directed by the Secretary of the Interior to complete a NEPA process before the Secretary makes a decision whether to issue a 10-year Special Use Permit to the Drakes Bay Oyster Company, in Point Reyes National Seashore, after their current permit expires on Nov. 30, 2012. The NPS is preparing an Environmental Impact Statement (EIS), which will be released for public review in the fall of 2011.

The NPS intends to utilize the process and documentation required for preparation of the EIS to comply with §106 of the National Historic Preservation Act (NHPA). In accordance with section 800.8(c) of Advisory Council on Historic Preservation (ACHP) regulations for Section 106 of the NHPA (36 CFR Part 800), NPS is hereby notifying your office in advance of our intention to use the EA to meet our Section 106 obligations. By copy of this letter, NPS is also notifying the ACHP of this intent.

We appreciate working with you on the protection of cultural resources in Point Reyes National Seashore. If you have any questions regarding this project, please call me at (415) 464-5127.

Sincerely,

Gordon White, Chief of Cultural Resources

cc:

Advisory Council on Historic Preservation



United States Department of the Interior

NATIONAL PARK SERVICE

Point Reyes National Seashore
Point Reyes, California 94956

IN REPLY REFER TO:

H4217

April 5, 2011

Ms. Jenan Saunders
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Re: Request for Concurrence, Determination of Eligibility of Johnson's Oyster Company (aka Drake's Bay Oyster Co.), Pt. Reyes National Seashore

Dear Ms. Saunders,

The National Park Service (NPS) was directed by the Secretary of the Interior to complete a NEPA process before the Secretary makes a decision whether to issue a 10-year Special Use Permit to the Drakes Bay Oyster Company, in Point Reyes National Seashore, after their current permit expires on Nov. 30, 2012. The NPS is preparing an Environmental Impact Statement (EIS), which will be released for public review in the fall of 2011.

Pursuant to the requirements of the National Historic Preservation Act (NHPA), the NPS has completed a determination of eligibility for the Oyster Company site on the shore of Drake's Estero and growing beds in the Estero itself. Based on this evaluation we have found that while the oyster-growing facility is significantly associated with the rebirth and development of the California oyster industry in the 1930's, the property is ineligible for listing in the National Register because it lacks historic integrity. Please find enclosed the National Register form, which provides the necessary information supporting this conclusion.

We request your concurrence with this finding of ineligibility. If you have any questions regarding this project, please call me at (415) 464-5127.

Sincerely,

Gordon White, Chief of Cultural Resources

enclosure:

National Register of Historic Places Registration Form – Johnson Oyster Company



Preserving America's Heritage

April 18, 2011

Mr. Gordon White
Cultural Resources Chief
Point Reyes National Seashore
National Park Service
Point Reyes, California 94956

Ref: Renewal of Special Use Permit to the Drakes Bay Oyster Company

Dear Mr. White:

On April 12, 2011, the Advisory Council on Historic Preservation (ACHP) received the National Park Service's (NPS') notification pursuant to Section 800.8(c) of the ACHP's regulations, "Protection of Historic Properties" (36 CFR Part 800). We appreciate receiving your notification, which establishes that NPS will use the process and documentation required for the preparation of an EIS/ROD to comply with Section 106 of the National Historic Preservation Act in lieu of the procedures set forth in 36 CFR 800.3 through 800.6.

In addition to notification to the ACHP, NPS must also notify the California State Historic Preservation Officer (SHPO) and meet the standards in Section 800.8(c)(1)(i) through (v) for the following:

- identify consulting parties either pursuant to 800.3(f) or through the NEPA scoping process with results consistent with § 800.3(f);
- identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of § 800.4 through 800.5;
- consult regarding the effects of the undertaking on the qualifying characteristics of historic properties with the SHPO/THPO, Indian tribes, other consulting parties and the Council;
- involve the public; and
- develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA.

To meet the requirement to consult with the ACHP as appropriate, the NPS should notify the ACHP in the event NPS determines, in consultation with the SHPO, Indian tribes, and other consulting parties, that the proposed undertaking may adversely affect properties listed, or eligible for listing, on the National Register of Historic Places (historic properties).

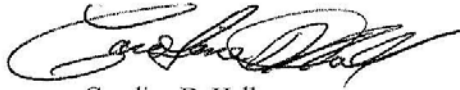
ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

In addition, Section 800.8(c)(2)(i) requires that you submit to the ACHP any DEIS or EIS you prepare. Inclusion of your adverse effect determination in both the DEIS/EIS and in your cover letter transmitting the DEIS/EIS to the ACHP will help ensure a timely response from the ACHP regarding its decision to participate in consultation. Please indicate in your cover letter the schedule for Section 106 consultation and a date by which you require a response by the ACHP.

Thank you for your notification pursuant to Section 800.8(c). If you have any questions or if we may be of assistance, please contact Katry Harris at 202-606-8520, or via e-mail at kharris@achp.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caroline D. Hall', written in a cursive style.

Caroline D. Hall
Assistant Director
Office of Federal Agency Programs
Federal Property Management Section



United States Department of the Interior

NATIONAL PARK SERVICE

Point Reyes National Seashore
Point Reyes, California 94956

IN REPLY REFER TO:

L7617
(DBOC SUP EIS)

June 2, 2011

Timothy Ragen, Executive Director
Marine Mammal Commission
4340 East West Highway, Room 700
Bethesda, Maryland 20814-4498

Dear Mr. ~~Ragen~~ ^{Tim}:

The National Park Service (NPS) has initiated the preparation of an Environmental Impact Statement (EIS) to evaluate a potential issuance of a Special Use Permit for commercial oyster operations within Drakes Estero at Point Reyes National Seashore. Pursuant to Section 124 of Public Law 111-88, the Secretary of the Interior has the discretionary authority to issue a special use permit for a period of 10 years to Drakes Bay Oyster Company (DBOC) for commercial harvesting and processing of shellfish at Point Reyes National Seashore. The existing Reservation of Use and Occupancy and associated special use permit held by DBOC will expire on November 30, 2012. DBOC has submitted a request for the issuance of a new permit upon expiration of the existing permit.

On behalf of the Secretary, the NPS will use the National Environmental Policy Act (NEPA) process to engage the public and evaluate the effects of continuing the commercial operation within the national park. The results of the NEPA process will be used to inform the decision of whether a new special use permit should be issued to DBOC for a period of 10 years.

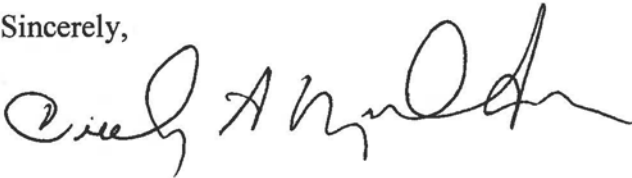
In accordance with the NEPA PL 91-190 USC 4321, and the Council of Environmental Quality (CEQ) Regulations Section 1501.5 and 1501.6, the NPS is inviting the Marine Mammal Commission to be a cooperating agency in the EIS process to provide information in your areas of technical expertise, which will assist the NPS in making a more informed decision. The NPS has entered into a Cooperating Agency Agreement with several other government agencies that indicated their intent to participate in the development of the EIS as cooperating agencies including the California Department of Fish and Game, Environmental Protection Agency, NOAA-National Marine Fisheries Service, and US Army Corps of Engineers.

The NPS announced initial scoping for the project on October 8, 2010. At that time, three public open houses were announced to provide opportunity for the public to learn more about the project and provide comments. The comment period closed on November 26, 2010 after 50 days. Over 4,000 pieces of correspondence were received during public scoping. On January 31, 2011, the NPS posted all public comment analysis report and all individual comments on line at:

http://www.nps.gov/pore/parkmgmt/planning_dboc_sup_scoping_comments.htm

Please let us know if you would like to participate as a Cooperating Agency in the development of the Drakes Bay Oyster Company Special Use Permit EIS. Enclosed is a copy of the executed Cooperating Agency Agreement for your consideration. If the Marine Mammal Commission wishes to participate as a cooperating agency, we would add a section specific to the roles for your organization regarding the review. If you have questions concerning the role of cooperating agencies, please contact Brannon Ketcham at (415) 464-5192. We appreciate your participation in this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Cicely A. Muldoon". The signature is fluid and cursive, with the first name "Cicely" written in a larger, more prominent script than the last name "Muldoon".

Cicely A. Muldoon
Superintendent

Enclosure



United States Department of the Interior

NATIONAL PARK SERVICE

Point Reyes National Seashore
Point Reyes, California 94956

IN REPLY REFER TO:
H4217

JUL 08 2011

Milford Wayne Donaldson, FAIA, LEED AP
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Re: Request for Concurrence, Determination of Eligibility of Johnson's Oyster Company (aka Drake's Bay Oyster Co.), Pt. Reyes National Seashore


Dear Mr. Donaldson,

The National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) to evaluate a potential issuance of a Special Use Permit for commercial oyster operations within Drakes Estero at Point Reyes National Seashore. Pursuant to Section 124 of Public Law 111-88, the Secretary of the Interior has the discretionary authority to issue a special use permit for a period of 10 years to Drakes Bay Oyster Company (DBOC). The existing Reservation of Use and Occupancy and associated special use permit held by DBOC will expire on November 30, 2012. The NPS is planning to release the Draft Environmental Impact Statement for public review in the fall of 2011.

Pursuant to the requirements of the National Historic Preservation Act, the NPS completed a determination of eligibility (DOE) for the Oyster Company site on the shore of Drake's Estero and growing beds in the Estero itself. The DOE found that while the oyster-growing facility is significantly associated with the rebirth and development of the California oyster industry in the 1930's, the property is ineligible for listing in the National Register because it lacks historic integrity. We forwarded the DOE to your office on April 5, 2011. Based on comments received from Mr. Mark Beason in a telephone call, edits were made to the DOE. The updated DOE is enclosed.

We request your concurrence with this finding of ineligibility. If you have any questions regarding this project, please contact Chief of Cultural Resources Gordon White at (415) 464-5127.

Sincerely,



ACTING SUPT.

Cicely Muldoon
Superintendent

enclosure:

National Register of Historic Places Registration Form – Johnson Oyster Company

STATE OF CALIFORNIA – THE RESOURCES AGENCY

EDMUND G. BROWN, JR., Governor

**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

1725 23rd Street, Suite 100
SACRAMENTO, CA 95816-7100
(916) 445-7000 Fax: (916) 445-7053
calshpo@parks.ca.gov
www.ohp.parks.ca.gov



August 4, 2011

Reply in Reference To: NPS110411A

Cicely Muldoon
Superintendent
National Park Service
Point Reyes National Seashore
Point Reyes, California 94956

Re: Request for Concurrence, Determination of Eligibility of Johnson's Oyster Company (aka Drake's Bay Oyster Co.), Point Reyes National Seashore

Dear Ms. Muldoon:

Thank you for your letter dated July 8, 2011, requesting my comment and concurrence for the Determination of Eligibility for Johnson's Oyster Company (aka Drake's Bay Oyster Co.) within the boundaries of Point Reyes National Seashore. Along with your letter, you submitted National Register of Historic Places (NRHP) Registration Form (undated) that provides the context and evaluation for this property.

Through this evaluation, NPS concludes that while Johnson's Oyster Company appears to be significant under NRHP Criterion A, it lacks historic integrity. Therefore, the property is not eligible for listing on the NRHP. After reviewing this determination of eligibility, I concur that the property is not eligible for listing on the NRHP.

Thank you for seeking my comments and considering historic properties as part of your planning. If you have any questions or concerns, please contact Mark Beason, Project Review Unit historian, at (916) 445-7047 or mbeason@parks.ca.gov.

Sincerely,

Milford Wayne Donaldson, FAIA
State Historic Preservation Officer



United States Department of the Interior

NATIONAL PARK SERVICE

Point Reyes National Seashore
Point Reyes, California 94956

IN REPLY REFER TO:

H4217

AUG 10 2011

Dr. Greg Sarris
Tribal Chairman
Federated Indians of Graton Rancheria
6400 Redwood Drive, Suite 300
Rohnert Park, CA 94928

Re: Notification of intent to use National Environmental Policy Act (NEPA) process to meet §106 Obligations at Point Reyes National Seashore (PRNS)

Dear Chairman Sarris,

The National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) to evaluate a potential issuance of a Special Use Permit for commercial oyster operations within Drakes Estero at PRNS. Pursuant to Section 124 of Public Law 111-88, the Secretary of the Interior has the discretionary authority to issue a special use permit for a period of 10 years to Drakes Bay Oyster Company (DBOC). The existing Reservation of Use and Occupancy and associated special use permit held by DBOC will expire on November 30, 2012. The NPS is planning to release the Draft EIS for public review in the fall of 2011.

The NPS intends to utilize the process and documentation required for preparation of the EIS to comply with §106 of the National Historic Preservation Act (NHPA). In accordance with section 800.8(c) of Advisory Council on Historic Preservation (ACHP) regulations for §106 of the NHPA (36 CFR Part 800), NPS is hereby notifying you in advance of our intention to use the EIS to meet our §106 obligations. We look forward to engaging in a formal §106 consultation with the Tribe resulting in a thoughtful review of the draft EIS during the public comment period this fall.

Over the last few months we have communicated several times with Tribal representative Nick Tipon, keeping him apprised of the status of the EIS. Nick has assisted contractors with archaeological site surveys on the Estero, and on July 14 we briefed Nick in a meeting at the Seashore on the status of alternatives and proposed avoidance measures related to FIGR cultural resources.

We continue to enjoy an excellent working relationship with Nick, and appreciate the thoughtful assistance we receive from him on cultural resource issues. Thank you again for your continued interest in and commitment to preserving the Tribe's ancestral homelands in the Seashore. If you have any questions regarding this project, please contact Gordon White, Chief of Cultural Resources, at (415) 464-5127.

Sincerely,



Cicely A. Muldoon
Superintendent



August 29, 2011

Cicely Muldoon
Superintendent
Point Reyes National Seashore
Point Reyes, CA 94956

RE: EIS for a Special Use Permit at Drakes Estero

Dear Superintendent Muldoon:

RECEIVED	
Point Reyes National Seashore	
AUG 30 '11	
<input checked="" type="checkbox"/>	SUPT
<input checked="" type="checkbox"/>	MGMT ASST
<input checked="" type="checkbox"/>	VRP
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<input checked="" type="checkbox"/>	CENT FILES

Federated Indians of Graton Rancheria
Sacred Sites Protection Committee
6400 Redwood Drive Suite 300
Rohnert Park, CA 94928

The Federated Indians of Graton Rancheria (FIGR), a federally recognized Tribe and sovereign government, has received the information you have provided regarding the writing of an EIS for a Special Use Permit at Drakes Estero. We understand the project review must comply with the National Historic Preservation Act, Section 106 and 36 CFR Part 800.

We concur with your request to use the EIS process to meet the Section 106 "government to government" consultation requirements with our Tribe for this project. We have appreciated the information and discussions we have had on this topic in the past.

We look forward to continuing our mutually respectful relationship with Point Reyes National Seashore in our effort to protect the cultural resources at this location. We will carefully review the Draft EIS when it is available and provide comments where necessary.

Respectfully,

Nick Tipon
Sacred Sites Protection Committee
707 478-1737

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E

SPECIAL STATUS SPECIES TABLES

Table E-1. Federally Listed Animal Species Reported by USFWS

Table E-2. Federally Listed Animal Species Potentially Affected by the Proposed Action

Table E-3. Federally Listed Plant Species in Drakes Bay Quad

Table E-4. Rare Plant Species (excluded due to lack of habitat in project area)

Table E-5. State-listed Plant Species (not impacted by the project)

Table E-6. Species of Concern Listed in Point Reyes National Seashore

TABLE E-1. FEDERALLY LISTED ANIMAL SPECIES REPORTED BY USFWS

Common Name	Scientific Name	Federal Status	Critical Habitat	Potentially Impacted by Project
Black Abalone	<i>Haliotes cracherodii</i>	E	No	No
Blue Whale	<i>Balaenoptera musculus</i>	E	No	No
California Brown Pelican	<i>Pelecanus occidentalis californicus</i>	E	No	No
California Coastal Chinook Salmon	<i>Oncorhynchus tshawytscha</i>	T	No	No
California Freshwater Shrimp	<i>Syncaris pacifica</i>	E	No	No
California Least Tern	<i>Sternula antillarum</i> (=Sterna, =albifrons) <i>browni</i>	E	No	Yes
California Red-legged Frog	<i>Rana draytonii</i>	T	Yes	Yes
Central California Coast Coho Salmon	<i>Oncorhynchus kisutch</i>	E	Yes	Yes
Central California Coastal Steelhead	<i>Oncorhynchus mykiss</i>	T	Yes	Yes
Central Valley Steelhead		T	No	No
Finback (=Fin) Whale	<i>Balaenoptera physalus</i>	E	No	No
Green Turtle	<i>Chelonia mydas</i> (incl. <i>agassizi</i>)	T	No	No
Guadalupe Fur Seal	<i>Arctocephalus townsendi</i>	T	No	No
Leatherback Turtle	<i>Dermochelys coriacea</i>	E	Yes	Yes
Loggerhead Turtle	<i>Caretta caretta</i>	T	No	No
Marbled Murrelet	<i>Brachyramphus marmoratus</i>	T	Yes	No
Myrtle's Silverspot Butterfly	<i>Speyeria zerene myrtleae</i>	E	No	Yes
Northern Spotted Owl	<i>Strix occidentalis caurina</i>	T	No	No
Olive (=Pacific) Ridley Sea Turtle	<i>Lepidochelys olivacea</i>	T	No	No
Right Whale	<i>Eubalaena</i> (=Balaena) <i>glacialis</i>	E	No	No
Sei Whale	<i>Balaenoptera borealis</i>	E	No	No
Short-tailed Albatross	<i>Diomedea albatrus</i>	E	No	No
Sperm Whale	<i>Physeter catodon</i> (=macrocephalus)	E	No	No
Steller Sea-lion	<i>Eumetopias jubatus</i>	T	No	No
Tidewater Goby	<i>Eucyclogobius newberryi</i>	E	No	No
Western Snowy Plover	<i>Charadrius alexandrinus nivosus</i>	T	Yes	Yes
Black Abalone	<i>Haliotes cracherodii</i>	E	No	No
White Abalone	<i>Haliotes sorenseni</i>	E	No	No

Source: USFWS 2010

Notes: Listing status: E: Endangered T: Threatened

TABLE E-2. FEDERALLY LISTED ANIMAL SPECIES POTENTIALLY AFFECTED BY THE PROPOSED ACTION

Common Name	Scientific Name	Federal Status	Critical Habitat
California Least Tern	<i>Sternula antillarum</i> (=Sterna, =albifrons) browni	E	No
California Red-legged Frog	<i>Rana draytonii</i>	T	Yes
Central California Coast Coho Salmon	<i>Oncorhynchus kisutch</i>	E	Yes
Central California Coastal Steelhead	<i>Oncorhynchus mykiss</i>	T	No
Leatherback Turtle	<i>Dermochelys coriacea</i>	E	Yes
Myrtle's Silverspot Butterfly	<i>Speyeria zerene myrtleae</i>	E	No
Western Snowy Plover	<i>Charadrius alexandrinus nivosus</i>	T	No

Source: USFWS 2010

TABLE E-3. FEDERALLY LISTED PLANT SPECIES IN DRAKES BAY QUAD

Common Name	Scientific Name	Federal Status	State Status	CNPS Status	Affected by Project?
Beach Layia	<i>Layia carnosa</i>	Endangered	Endangered	1B	No
Sonoma Alopecurus	<i>Alepecurus aequalis</i> var. <i>sonomensis</i>	Endangered	No current listing status	1B	No
Sonoma Spineflower	<i>Chorizanthe valida</i>	Endangered	Endangered	1B	No
Tidestrom's Lupine	<i>Lupinus tidestromii</i> var. <i>layneae</i>	Endangered	Endangered	1B	No

Source: USFWS 2010

TABLE E-4. RARE PLANT SPECIES (EXCLUDED DUE TO LACK OF HABITAT IN PROJECT AREA)

Common Name	Scientific Name	CNPS List*	Habitat Type
Beach Starwort	<i>Stellaria littoralis</i>	List 4.2	wetlands, coastal scrub, coastal dunes
Blasdale's Bent Grass	<i>Agrostis blasdalei</i>	List 1B.2	Coastal scrub, dune, and grassland
Blue Coast Gilia	<i>Gilia capitata</i> ssp. <i>Chamissonis</i>	List 1B.1	coastal dunes, coastal scrub
Buxbaum's Sedge	<i>Carex buxbaumii</i>	List 4.2	wetlands
California Bottle-brush Grass	<i>Elymus californicus</i>	List 4.3	hardwood forest, coniferous forest, riparian woodland
Coast Lily	<i>Lilium maritimum</i>	List 1B.1	wetlands, grassland
Coast Rock Cress	<i>Arabis blepharophylla</i>	List 4.3	Hardwood forest, coastal scrub, grassland
Coastal Bluff Morning-glory	<i>Calystegia purpurata</i> ssp. <i>Saxicola</i>	List 1B.2	Coastal scrub and coastal dune
Coastal Marsh Milk-vetch	<i>Astragalus pycnostachyus</i> var. <i>pycnostachyus</i>	List 1B.2	Coastal scrub, dune, and wetlands
Curly-leaved Monardella	<i>Monardella undulate</i>	List 4.2	coniferous forest, coastal dunes, grassland, coastal scrub
Dark-eyed Gilia	<i>Gilia millefoliata</i>	List 1B.2	coastal dunes

TABLE E-4. RARE PLANT SPECIES (EXCLUDED DUE TO LACK OF HABITAT IN PROJECT AREA) (CONTINUED)

Common Name	Scientific Name	CNPS List*	Habitat Type
Delta Mudwort	<i>Limosella subulata</i>	List 2.1	Wetlands
Fragrant Fritillary	<i>Fritillaria liliacea</i>	List 1B.2	grassland, coastal scrub
Franciscan Thistle	<i>Cirsium andrewsii</i>	List 1B.2	hardwood forest, coastal scrub, grassland
Gairdner's Yampah	<i>Perideridia gairdneri</i> ssp. <i>Gairdneri</i>	List 4.2	grassland, coniferous forest
Glory Brush	<i>Ceanothus gloriosus</i> var. <i>exaltatus</i>	List 4.3	coastal scrub
Harlequin Lotus	<i>Lotus formosissimus</i>	List 4.2	coastal scrub, grassland, wetlands
Humboldt Bay Owl's-clover	<i>Castilleja ambigua</i> ssp. <i>Humboldtensis</i>	List 1B.2	wetlands
Large-flowered Leptosiphon	<i>Leptosiphon grandiflorus</i>	List 4.2	coastal scrub, Bishop pine forest, coastal dunes, grassland
Lobb's Aquatic Buttercup	<i>Ranunculus lobbii</i>	List 4.2	coniferous forest, grassland, wetlands
Marin Checker Lily	<i>Fritillaria lanceolata</i> var. <i>tristulis</i>	List 1B.1	coastal scrub, grassland
Marin Knotweed	<i>Polygonum marinense</i>	List 3.1	wetlands
Marin Manzanita	<i>Arctostaphylos virgata</i>	List 1B.2	Coastal scrub
Marsh Microseris	<i>Microseris paludosa</i>	List 1B.2	Coniferous forest, grassland
Mt. Tamalpais Jewel-flower	<i>Streptanthus glandulosus</i> ssp. <i>pulchellus</i>	List 1B.2	grassland, coastal scrub
Mt. Vision Ceanothus	<i>Ceanothus gloriosus</i> var. <i>porrectus</i>	List 1B.3	Bishop pine forest, grassland, coastal scrub
Nodding Semaphore Grass	<i>Pleuropogon refractus</i>	List 4.2	coniferous forest, wetlands, grassland, riparian woodland
North Coast Phacelia	<i>Phacelia insularis</i> var. <i>continentis</i>	List 1B.2	coastal scrub, coastal dunes
Pale Yellow Hayfield Tarplant	<i>Hemizonia congesta</i> ssp. <i>Leucocephala</i>	List 3	coastal scrub, grassland
Perennial Goldfields	<i>Lasthenia californica</i> ssp. <i>Macrantha</i>	List 1B.2	coastal scrub, coastal dunes
Pink Sand-verbena	<i>Abronia umbellata</i> ssp. <i>breviflora</i>	List 1B.1	Coastal dune
Point Reyes Bird's-beak	<i>Cordylanthus maritimus</i> ssp. <i>palustris</i>	List 1B.2	Wetlands
Point Reyes Ceanothus	<i>Ceanothus gloriosus</i> var. <i>gloriosus</i>	List 4.3	coastal scrub, Bishop pine forest, coastal dunes
Point Reyes Checkerbloom	<i>Sidalcea calycosa</i> ssp. <i>Rhizomata</i>	List 1B.2	wetlands, grasslands
Point Reyes Horkelia	<i>Horkelia marinensis</i>	List 1B.2	coastal dunes, grassland, coastal scrub

TABLE E-4. RARE PLANT SPECIES (EXCLUDED DUE TO LACK OF HABITAT IN PROJECT AREA) (CONTINUED)

Common Name	Scientific Name	CNPS List*	Habitat Type
Point Reyes Rein Orchid	<i>Piperia elegans</i> ssp. <i>Decurtata</i>	List 1B.1	coastal scrub
Rose Leptosiphon	<i>Leptosiphon rosaceus</i>	List 1B.1	coastal scrub, grassland
San Francisco Bay Spineflower	<i>Chorizanthe cuspidata</i> var. <i>cuspidata</i>	List 1B.2	coastal scrub, coastal dunes, grassland
San Francisco Gumplant	<i>Grindelia hirsutula</i> var. <i>maritime</i>	List 1B.2	coastal scrub, grassland
San Francisco Owl's-clover	<i>Triphysaria floribunda</i>	List 1B.2	coastal scrub, grassland
San Francisco Wallflower	<i>Erysimum franciscanum</i>	List 4.2	coastal dunes, and scrub
Short-leaved Evax	<i>Hesperevax sparsiflora</i> var. <i>brevifolia</i>	List 2.2	coastal scrub, coastal dunes
Swamp Harebell	<i>Campanula californica</i>	List 1B.2	wetlands, grassland
Thurber's Reed Grass	<i>Calamagrostis crassiglumis</i>	List 2.1	Coastal scrub, wetlands
Undescribed; Bolinas Ridge	<i>Ceanothus</i> ssp.	TBD	coastal scrub, grasslands
Western Leatherwood	<i>Dirca occidentalis</i>	List 1B.2	hardwood forest, coniferous forest, riparian woodland
Woolly-headed Spineflower	<i>Chorizanthe cuspidata</i> var. <i>villosa</i>	List 1B.2	coastal dunes, grassland, coastal scrub

Notes: a California Native Plant Society (CNPS). 2008. Inventory of Rare and Endangered Plants (online edition, v7-08b). California

Native Plant Society. Sacramento, CA. Accessed on Tue, Jun. 10, 2008 from <http://www.cnps.org/inventory>

Listing Significance: List 1B: Plants Rare, Threatened, or Endangered in California and Elsewhere

List 2: Plants Rare, Threatened, or Endangered in California, but More Common Elsewhere

List 3: Plants About Which We Need More Information - A Review List

List 4: Plants of Limited Distribution - A Watch List

TABLE E-5. STATE-LISTED PLANT SPECIES (NOT IMPACTED BY THE PROJECT)

Common Name	Scientific Name	State Status	Habitat Type
Mason's Ceanothus	<i>Ceanothus masonii</i>	No current listing status	Coastal scrub
Point Reyes Blennosperma	<i>Blennosperma nanum</i> var. <i>robustum</i>	No current listing status	Grassland, coastal scrub
Pt. Reyes Meadowfoam	<i>Limnanthes douglasii</i> ssp. <i>Sulphurea</i>	Endangered	Grassland, wetlands
San Francisco Popcornflower	<i>Plagiobothrys diffusus</i>	Endangered	Grassland

TABLE E-6. SPECIES OF CONCERN LISTED IN POINT REYES NATIONAL SEASHORE

Common Name	Scientific Name	Affected by Project?
Allen's Hummingbird	<i>Selasphorus sasin</i>	No
American Bittern	<i>Botaurus lentiginosus</i>	No
Ashy Storm-petrel	<i>Oceanodroma homochroa</i>	No
Bewick's Wren	<i>Thryomanes bewickii</i>	No
Black-crowned Night Heron	<i>Nycticorax nycticorax</i>	No
Black Rail	<i>Laterallus jamaicensis coturniculus</i>	No
Bocaccio	<i>Sebastes paucispinus</i>	No
Bumblebee Scarab Beetle	<i>Lichnanthe ursina</i>	No
California Myotis Bat	<i>Myotis californicus</i>	No
Common Loon	<i>Gavia immer</i>	No
Ferruginous Hawk	<i>Buteo regalis</i>	No
Fringed Myotis Bat	<i>Myotis thysanodes</i>	No
Globose Dune Beetle	<i>Coelus globosus</i>	No
Grasshopper Sparrow	<i>Ammodramus savannarum</i>	No
Harlequin Duck	<i>Histrionicus histrionicus</i>	No
Loggerhead Shrike	<i>Lanius ludovicianus</i>	No
Long-billed Curlew	<i>Numenius americanus</i>	No
Long-eared Myotis Bat	<i>Myotis evotis</i>	No
Long-legged Myotis Bat	<i>Myotis volans</i>	No
Marin Elfin Butterfly	<i>Incisalia mossii</i>	No
Nicklin's Peninsula Coast Range snail	<i>Helminthoglypta nickliniana awania</i>	No
Northwestern Pond Turtle	<i>Clemmys marmorata marmorata</i>	No
Olive-sided Flycatcher	<i>Contopus cooperi</i>	No
Opler's Longhorn Moth	<i>Adela oplerella</i>	No
Pacific Lamprey	<i>Lampetra tridentate</i>	No
Pacific Slope Flycatcher	<i>Empidonax difficilis</i>	No
Pacific Western Big-eared Bat	<i>Corynorhinus (Plecotus) townsendii townsendii</i>	No
Point Reyes Blue Butterfly	<i>Icaricia icaridides ssp</i>	No
Point Reyes Jumping Mouse	<i>Zapus trinotatus orarius</i>	No
Point Reyes Mountain Beaver	<i>Aplodontia rufa phaea</i>	No
Saltmarsh Yellowthroat	<i>Geothlypis trichas sinuosa</i>	No
Sandy Beach Tiger Beetle	<i>Cicindela hirticollis gravida</i>	No
Short-eared Owl	<i>Asio flammeus</i>	No
Sonoma Arctic Skipper	<i>Carterocephalus paleemon ssp</i>	No
Tomales Roach	<i>Lavinia symmetricus ssp.</i>	No
Tricolored Blackbird	<i>Agelaius tricolor</i>	No
Vaux's Swift	<i>Chaetura vauxi</i>	No
White-tailed (=Black Shouldered) Kite	<i>Elanus leucurus</i>	No
William's Bronze Shoulderband Snail	<i>Helminthoglypta arrosa williamsi</i>	No
Yuma Myotis Bat	<i>Myotis yumanensis</i>	No

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As the nation's principal conservation agency, the Department of the Interior has responsibilities for most of our nationally owned public lands and natural resources. This includes fostering wise use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our national parks and historic places, and providing for the enjoyment of life through outdoor recreation. The department assesses our energy and mineral resources and works to ensure that their development is in the best interests of all our people. The department also promotes the goals of the Take Pride in America campaign by encouraging stewardship and citizen responsibility for American Indian reservation communities and for people who live in island territories under U.S. administration.

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