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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:  Drakes Bay Oyster Co. 4/22/08
Signature Organization Date

Authorizing Official:  George Turnbull 4/22/08
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 Permittee, 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 Permittee.
- f) Revocation - This Permit may be terminated upon Default or at the discretion of the Permittee.
- 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 Permittee'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 Permittee 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) Permittee reserves the right for Permittee, 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 Permittee for the protection of the interests of Permittee, including Permittee's interests in any natural or cultural resources located on, in or under the Premises.
- f) Permittee 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, Permittee 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 Permittee'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 Permittee'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 Permittee, its employees, contractors or agents; provided, further, that Permittee 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.

- 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 Permitter:

Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

If to Permittee:

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

29) NO PARTNERSHIP OR JOINT VENTURE

- a) Permitter is not for any purpose a partner or joint venturer of Permittee in the development or operation of the Premises or in any business conducted on the Premises. Permitter shall not under any circumstances be responsible or obligated for any losses or liabilities of Permittee.

30) ANTI-DEFICIENCY ACT

- a) Permittee and Permitter agree that nothing contained in this Permit shall be construed as binding Permitter to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the subject matter of this Permit, or to involve Permitter in any contract or other obligation for the future expenditure of money in excess of such appropriations.

31) COMPLIANCE WITH EQUAL OPPORTUNITY LAWS

- a) Permittee agrees that in undertaking all activities pursuant to this Permit, Permittee will comply with all Applicable Laws relating to non-discrimination.

32) ENTIRE AGREEMENT AND AMENDMENT

- a) This instrument, together with the exhibits hereto, all of which are incorporated in this Permit by reference, constitutes the entire agreement between Permitter and Permittee with respect to the subject matter of this Permit and supersedes all prior offers, negotiations, oral and written. This Permit may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Permitter and Permittee.

33) NO PAYMENTS BY PERMITTER

- a) Under no circumstances or conditions, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall Permitter be expected or required to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability except as expressly set forth in this Permit.

34) NO THIRD PARTY BENEFICIARIES

- a) Except as expressly set forth in this Permit, this Permit shall not be deemed to confer upon any person or entity, other than the parties to this Permit as expressly set forth in this Permit, any third party beneficiary status, any right to enforce any Provision of this Permit, or any other right or interest.

35) NO PREFERENTIAL RENEWAL AND RELOCATION ASSISTANCE

- a) Permittee hereby agrees that Permittee is not a concessioner and that the provisions of law regarding National Park Service concessionaires do not apply to Permittee. No rights shall be acquired by virtue of this Permit entitling Permittee to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition

Policies Act of 1970, Public Law 91-646.

36) SEVERABILITY

- a) In case any one or more of the provisions of this Permit shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Permit, and this Permit shall be construed as if such invalid, illegal or unenforceable provisions had not been contained in this Permit.

37) EXHIBITS

- a) Each of the exhibits referenced in this Permit is attached hereto and incorporated herein.

38) TIME OF THE ESSENCE

- a) Time is hereby expressly declared to be of the essence of this Permit and of each and every Provision of this Permit.

39) HEADINGS

- a) Article, Section and Subsection headings in this Permit are for convenience only and are not to be construed as a part of this Permit or in any way limiting or amplifying the Provisions of this Permit.

40) PERMIT CONSTRUED AS A WHOLE

- a) The language in all parts of this Permit shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Permitter or Permittee. The Parties acknowledge that each party and its counsel have reviewed this Permit and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed or applied in the interpretation of this Permit.

41) MEANING OF TERMS

- a) Whenever the context so requires, the neuter gender shall include the masculine and the feminine, and the singular shall include the plural and vice versa.

42) FEDERAL LAW

- a) The laws of the United States shall govern the validity, construction and effect of this Permit.

LIST OF EXHIBITS

- 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

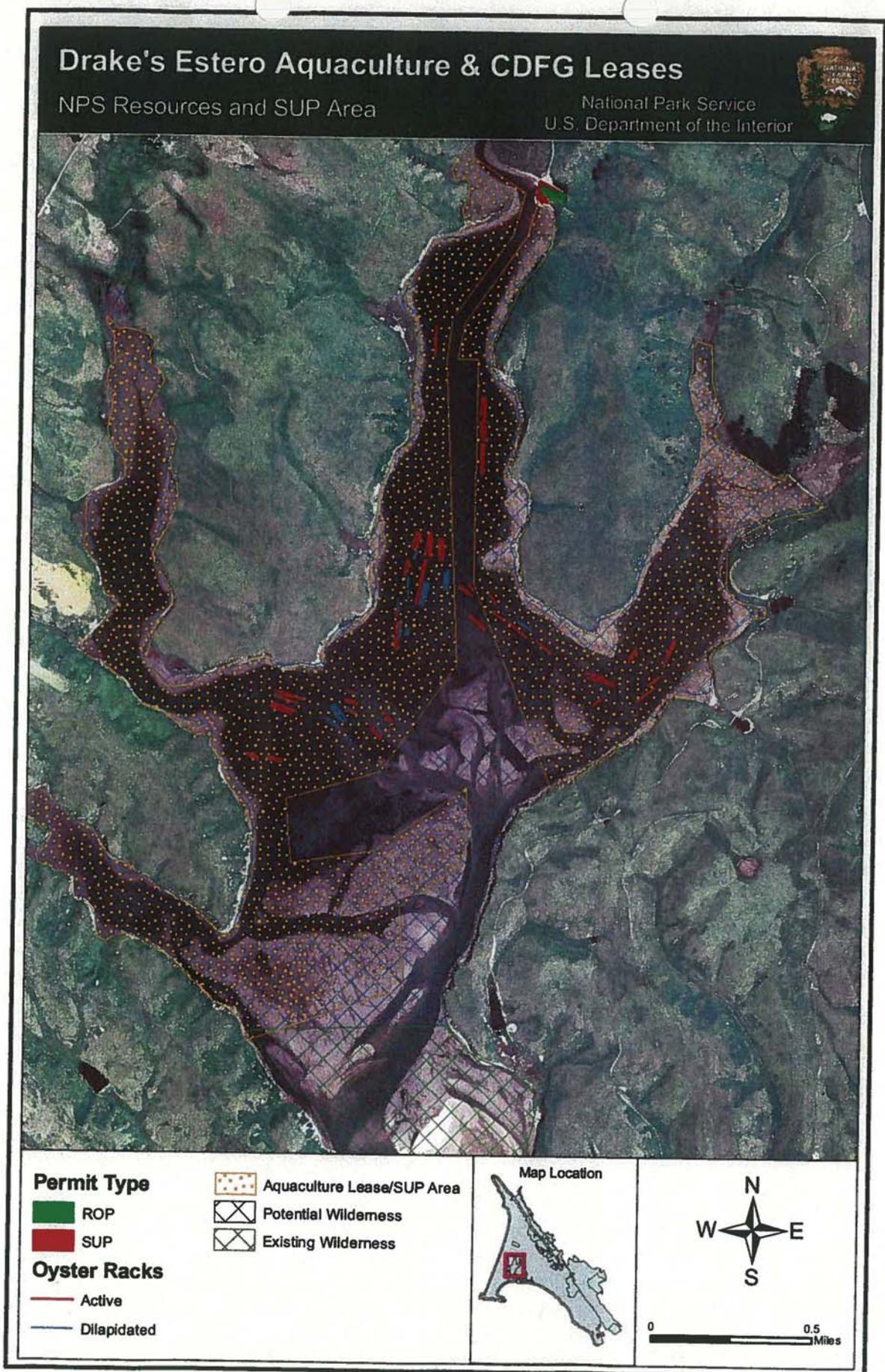


EXHIBIT B

Map – Drake's Estero Oysters – SUP & ROP

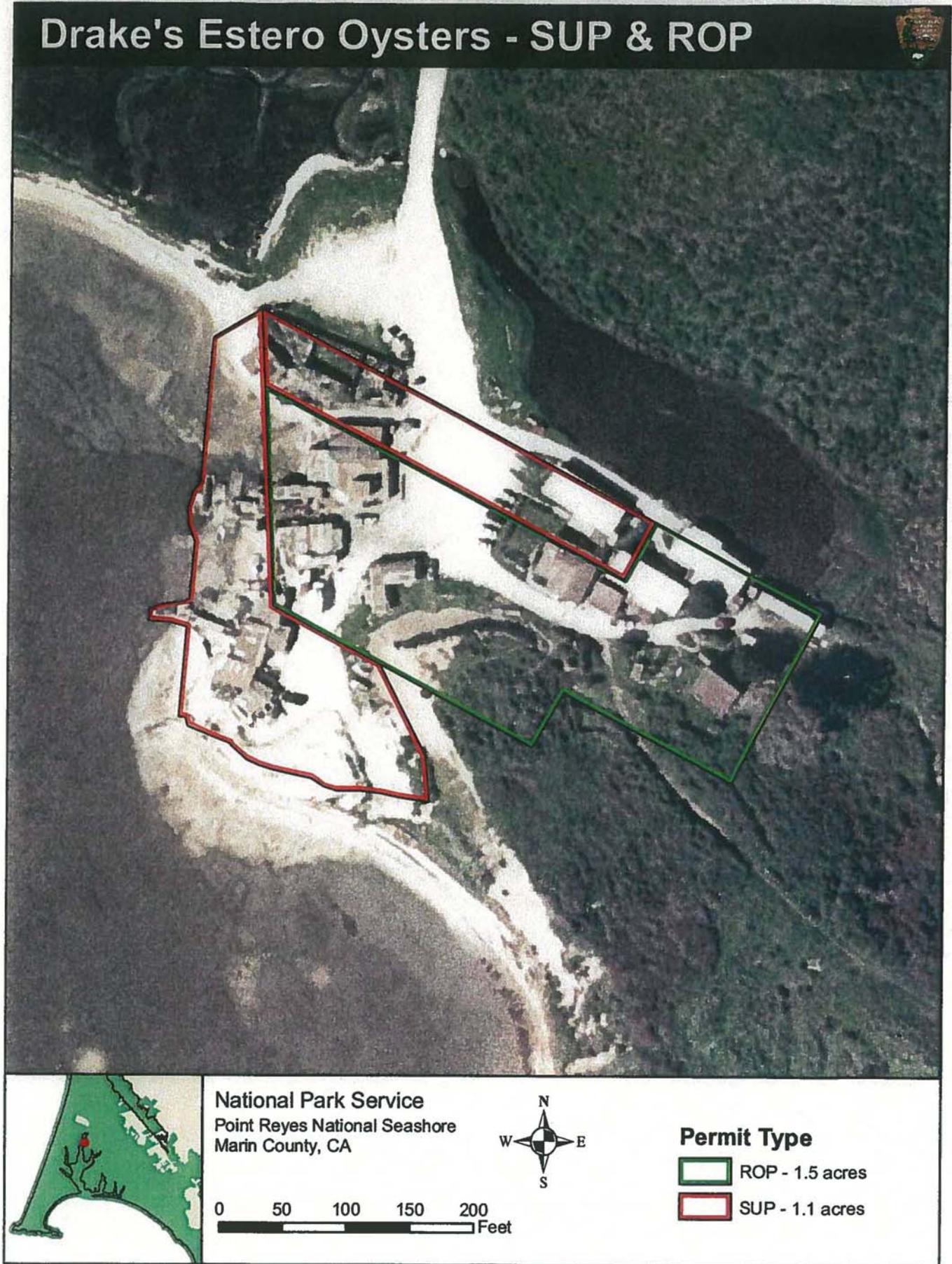
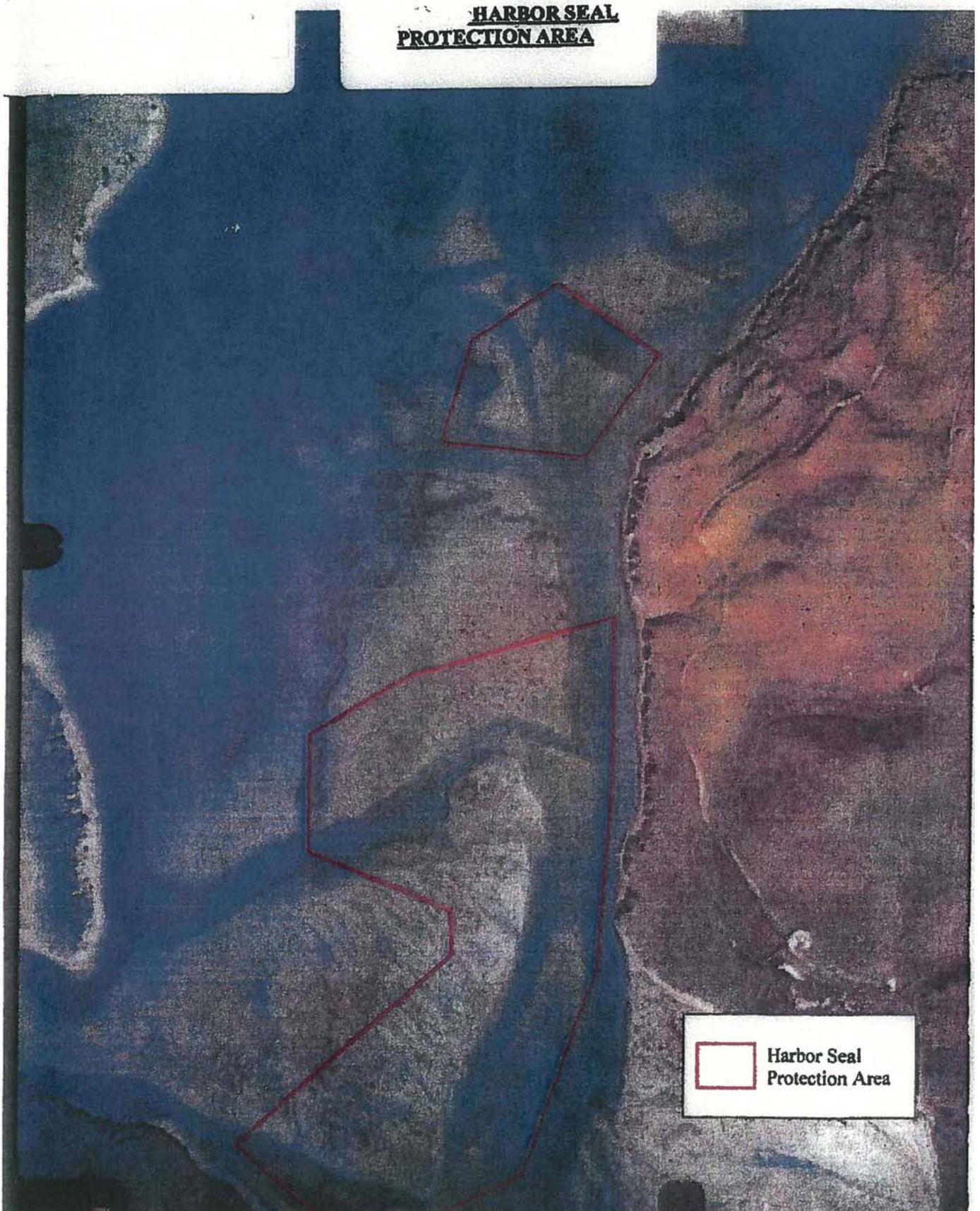


EXHIBIT C

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

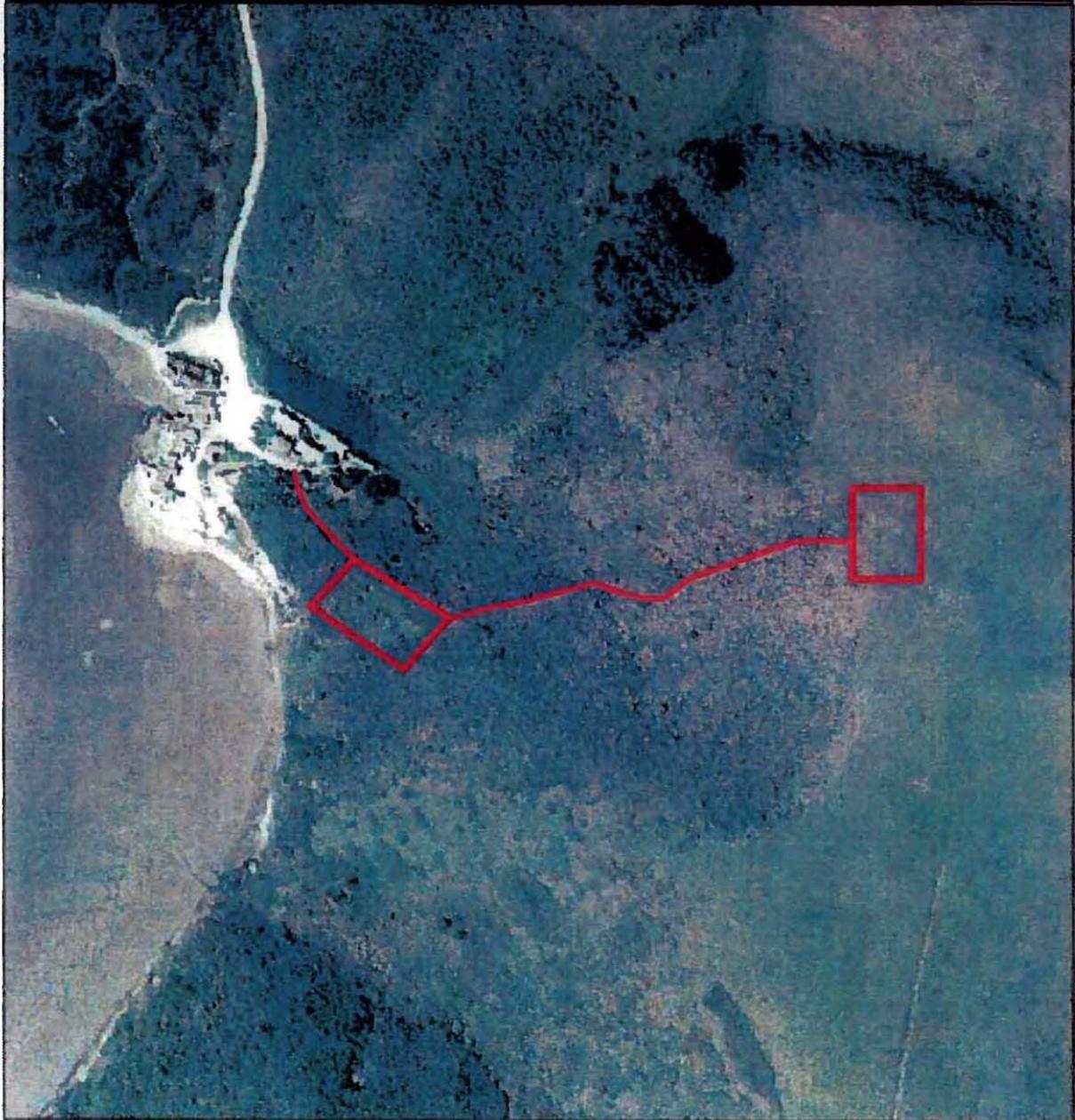
Map – Drakes Bay Oyster Company Well Area

EXHIBIT E

Map – Drakes Bay Oyster Company Sewage Area

EXHIBIT

Oyster Farm Leach Field (Approximate Location and Size)

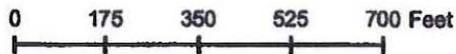


Location Map



National Park Service
Point Reyes National Seashore
Marin County, CA

 Oyster Farm Leach Field



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RESERVATION OF USE AND OCCUPANCY



United States Department of the Interior

NATIONAL PARK SERVICE
 WESTERN REGION
 450 GOLDEN GATE AVENUE, BOX 36063
 SAN FRANCISCO, CALIFORNIA 94102

IN REPLY REFER TO:

L1425(WR)ML
 PORE
 Tr. 02-106
 Johnson Oyster Co.

December 19, 1973

RECEIVED
 Point Reyes
 National Seashore
 DEC 21 1973
 COPY

<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

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

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
AT 30 MIN. PAST 12 P. M.
NOV 3 0 1972
Official Records of Marin County, Calif.

POINT REYES NATIONAL SEASHORE
Tract 02-106

109-130-03

46827

N. J. Giacomini
FEE \$ 5.00 RECORDER

BOOK 2634 PAGE 641

GRANT DEED

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>
<input type="checkbox"/> Computed on full value of property conveyed,
<input type="checkbox"/> OR Computed on full value less liens and encumbrances remaining at time of sale.
Signature of Declarant or Agent determining tax. <u>Albert Jensen</u>
Firm Name <u>Marin Title Guaranty Co.</u>

By Charles W. Johnson
Charles W. Johnson, President.

By Milton T. Simmons
Milton 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, 1976

J. M. Pohlmann
Notary Public in and for said State

BOOK 2634 PAGE

STATE OF CALIFORNIA, County of MECK

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 Simon

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 acknowledged to me that such corporation executed the same.

J. M. Pohlmann

Notary Public



BOOK 2034 PAGE 642

Form 14

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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(May 1971)

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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(April 71)

(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: [Signature]

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. Heins 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.

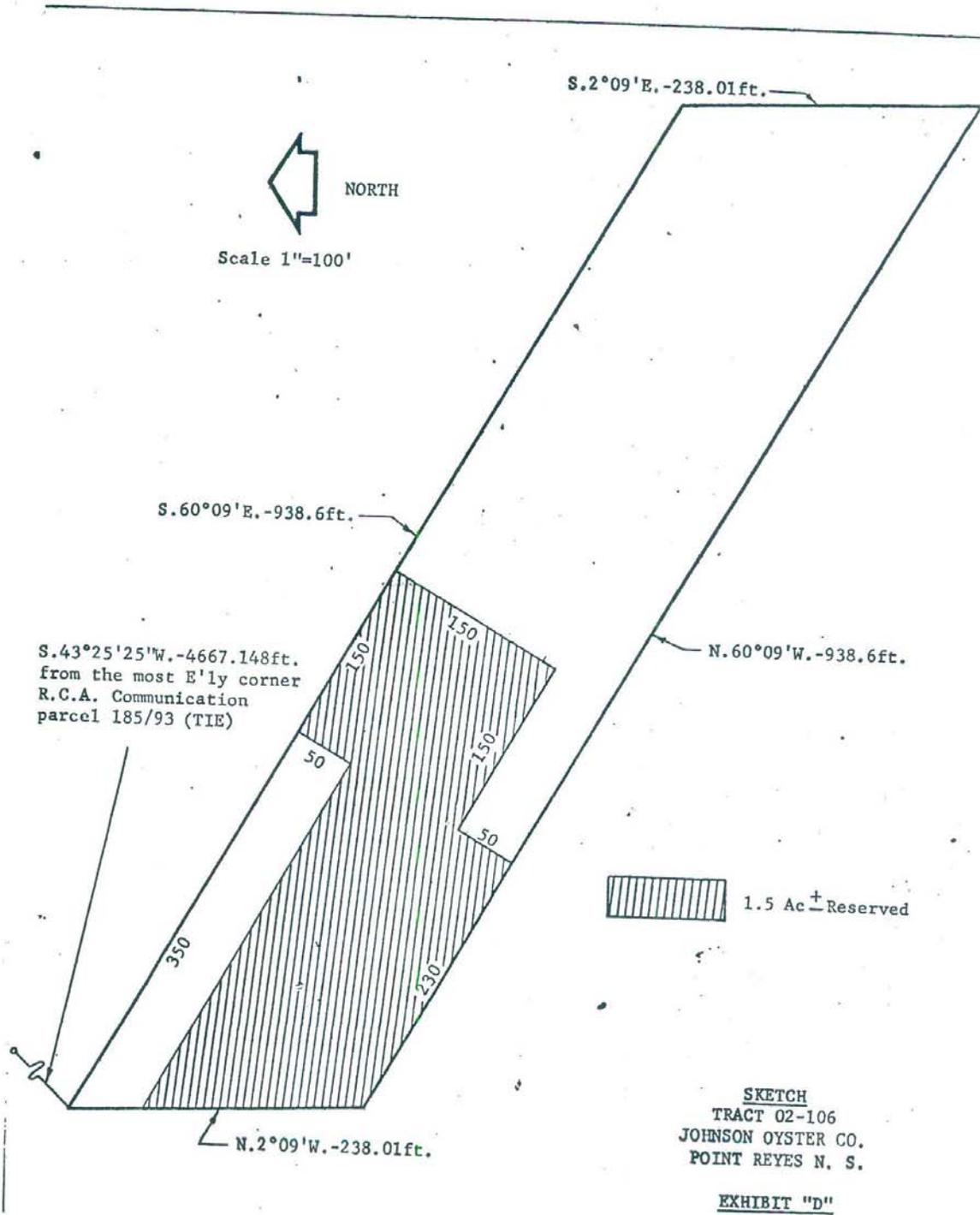
14. Should Vendor elect to dispose of any unused portion of the remainder of its reserved occupancy, the United States of America shall be afforded a right of first refusal to acquire the same.

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

16 USC 460bb-3
note.

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.

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 87-657, 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:

Wilderness areas.
Designation.
16 USC 1132
note.

Bandelier National Monument, N. Mex.
(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.

Gunnison National Monument, Colo.
(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.

Chiricahua National Monument, Ariz.
(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.

Great Sand Dunes National Monument, Colo.
(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.

Haleakala National Park, Hawaii.
(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.

Isle Royale National Park, Mich.
(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.

Joshua Tree National Monument, Calif.
(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 Mounment, 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 nonsuitability 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 nonsuitability 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 Thye-Blatnik Act (Public Law 733, Eightieth Congress, June 22, 1948; 62 Stat. 568), and the Humphrey-Thye-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.

(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".

98 Stat. 1619.

(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

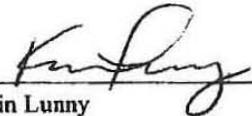
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p. 3

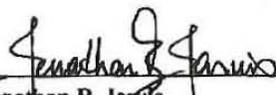
- DBOC will not be required to cover the cost of preparing the NEPA document. If there is litigation regarding NEPA compliance, it will not trigger the indemnification requirements set forth in the Special Use Permit.
- The Parties will exert best efforts to effectuate the principles set forth herein.
- 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 than 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

LEGAL_US_W #58722736.1

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 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
- Letter from Native American Heritage Commission, to the Seashore, regarding Notice of Completion, dated 10/13/11
- Letter from NMFS, to the Seashore, regarding Comments on the Draft EIS, dated 11/17/11
- Letter from EPA, to the Seashore, regarding Comments on the Draft EIS, dated 12/5/11
- Letter from NMFS, to the Seashore, regarding Points of Clarification on Previous Comment Letter, dated 12/8/11

- Letter from USACE, to the Seashore, regarding Comments on the Draft EIS, dated 12/8/11
- Letter from CDFG, to the Seashore, regarding Comments on the Draft EIS, dated 12/20/11
- Letter from the Seashore, to SHPO, regarding Request to Meet Regarding Section 106 Consultation, dated 1/9/12
- Letter from the Seashore, to FIGR, regarding Draft EIS, dated 1/9/12
- Letter from FIGR, to the Seashore, regarding Section 106 Consultation, dated 8/13/12
- Letter from Advisory Council on Historic Preservation, to the Seashore, regarding Receipt of Draft EIS Document, dated 10/18/12
- Letter from SHPO, to the Seashore, regarding Concurrence with Finding of No Adverse Effects, dated 10/29/12



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

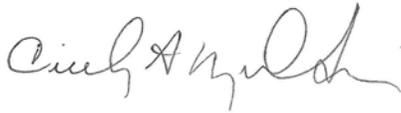
withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

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 cursive script, appearing to read "Cicely A. Muldoon".

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" being more prominent.

Cicely A. Muldoon
Superintendent

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

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Point Reyes National Seashore	
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<input checked="" type="checkbox"/>	CENTRAL FILES

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.

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

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BUDGET
CENTRAL FILES

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
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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)
- Dermodochelys 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 myrtleae

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 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 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 supersede 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

OCRM 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.

⁴³The 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).

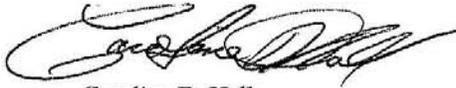
ADVISORY COUNCIL ON HISTORIC PRESERVATION

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,



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. ^{Tim}Ragen:

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,



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

**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,

Handwritten signature of Susan K. Stratton in cursive script.

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,

A handwritten signature in blue ink, appearing to read "Cicely A. Muldoon". The signature is fluid and cursive, with the first name being the most prominent.

Cicely A. Muldoon
Superintendent



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

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
SUPT
✓ MGMT ASST
VRP
✓ SPEC PARK USES
RANGE
✓ NAT RES
✓ CULT RES
SCIENCE
INTERP
FACILITIES
CONTRACTING
BUDGET
INFO TECH
✓ CENT FILES

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

STATE OF CALIFORNIA

Edmund G. Brown Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-4082
(916) 657-5390 - Fax

RECEIVED

2011 OCT 18 PM 3:09



October 13, 2011

POINT REYES NS

Brannon Ketcham
National Park Service
1 Bear Valley Rd.
Point Reyes Station, CA 94956

RE: SCH# 2010104004 Drakes Bay Oyster Company Special Use Permit; Marin County.

Dear Mr. Ketcham:

The Native American Heritage Commission (NAHC) has reviewed the Notice of Completion (NOC) referenced above. The California Environmental Quality Act (CEQA) states that any project that causes a substantial adverse change in the significance of an historical resource, which includes archeological resources, is a significant effect requiring the preparation of an EIR (CEQA Guidelines 15064(b)). To comply with this provision the lead agency is required to assess whether the project will have an adverse impact on historical resources within the area of project effect (APE), and if so to mitigate that effect. To adequately assess and mitigate project-related impacts to archaeological resources, the NAHC recommends the following actions:

- ✓ Contact the appropriate regional archaeological Information Center for a record search. The record search will determine:
 - If a part or all of the area of project effect (APE) has been previously surveyed for cultural resources.
 - If any known cultural resources have already been recorded on or adjacent to the APE.
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - If a survey is required to determine whether previously unrecorded cultural resources are present.
- ✓ If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure.
 - The final written report should be submitted within 3 months after work has been completed to the appropriate regional archaeological Information Center.
- ✓ Contact the Native American Heritage Commission for:
 - A Sacred Lands File Check. USGS 7.5 minute quadrangle name, township, range and section required.
 - A list of appropriate Native American contacts for consultation concerning the project site and to assist in the mitigation measures. Native American Contacts List attached.
- ✓ Lack of surface evidence of archeological resources does not preclude their subsurface existence.
 - Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archeological resources, per California Environmental Quality Act (CEQA) §15064.5(f). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities.
 - Lead agencies should include in their mitigation plan provisions for the disposition of recovered artifacts, in consultation with culturally affiliated Native Americans.
 - Lead agencies should include provisions for discovery of Native American human remains in their mitigation plan. Health and Safety Code §7050.5, CEQA §15064.5(e), and Public Resources Code §5097.98 mandates the process to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery.

Sincerely,
Katy Sanchez
Katy Sanchez
Program Analyst
(916) 653-4040

cc: State Clearinghouse

Native American Contact List
Marin County
October 13, 2011

The Federated Indians of Graton Rancheria
Gene Buvelot
6400 Redwood Drive, Ste 300 Coast Miwok
Rohnert Park, CA 94928 Southern Pomo
coastmiwok@aol.com
(415) 895-1163 Home
(415) 259-7819 Cell

Ya-Ka-Ama
7465 Steve Olson Lane Pomo
Forestville , CA 95436 Coast Miwok
info@yakaama.org Wappo
(707) 887-1541

The Federated Indians of Graton Rancheria
Greg Sarris, Chairperson
6400 Redwood Drive, Ste 300 Coast Miwok
Rohnert Park, CA 94928 Southern Pomo
coastmiwok@aol.com
707-566-2288
707-566-2291 - fax

The Federated Indians of Graton Rancheria
Frank Ross
PO Box 854 Coast Miwok
Novato , CA 94948 Southern Pomo
miwokone@yahoo.com
(415) 269-6075

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH# 2010104004 Drakes Bay Oyster Special Use Permit; Marin County.



NOV 21 PM 2:43

POINT REYES NS



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

NOV 17 2011

DBOC SUP EIS
c/o Superintendent
Cicely Muldoon
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, California 94956

Dear Ms. Muldoon:

NOAA's National Marine Fisheries Service (NMFS) appreciates the opportunity to comment on the Draft Environmental Impact Statement (DEIS) for Drakes Bay Oyster Company (DBOC) Special Use Permit (SUP), September 2011, prepared by the National Park Service (NPS) and their consultants.

NMFS reviewed the DEIS primarily from the perspective of the impacts of the action alternatives on marine resources and ecosystems. We also reviewed the adequacy of the methodology used in the analysis and identified additional information NPS should consider as it develops the final Environmental Impact Statement (FEIS). Our detailed comments are provided in the attachment.

Based on a review of our records relating to the trust resources for which NMFS has responsibilities under the Marine Mammal Protection Act, the Endangered Species Act, and the Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act:

- Based on the evidence and information that has been made available, the harbor seal population in Drakes Estero appears stable and healthy. We have no documentation of any recent disturbance of harbor seals by the aquaculture operation. We have no records of violations by DBOC or law enforcement investigations of DBOC under the Marine Mammal Protection Act.
- There is no indication of negative impacts to fish species of concern to NMFS, including ESA-listed salmonids and their critical habitat.
- There do not appear to be any significant impacts of DBOC operations on Essential Fish Habitat in Drakes Estero overall. We have no records to indicate that DBOC is impacting eelgrass to the degree that the eelgrass is not healthy or not providing adequate habitat values to the estero.



To improve the overall technical quality of the FEIS, we recommend that NPS:

- Modify the methodology so that all the alternatives are compared to the existing conditions baseline (as described in sections 1502.14, 1502.15, and 1502.16 in the CEQ regulations at [http://ceq.hss.doe.gov/ceq regulations/regulations.html](http://ceq.hss.doe.gov/ceq%20regulations/regulations.html))
- Add the National Aquaculture Act of 1980 as a relevant law informing this DEIS
- Expand the analysis to consider impacts on cultural resources and visitor experience
- Modify the analysis to take into account the ability of ecosystems to recover from negative impacts
- Provide a more balanced consideration of the ecosystem services and the positive impacts of shellfish aquaculture on habitat and water quality
- Include additional citations from the scientific literature.

In June 2011, NOAA adopted a new Marine Aquaculture Policy to enable the development of sustainable marine aquaculture within the context of NMFS multiple stewardship missions and broader social and economic goals. Under this policy, NOAA is committed to protecting wild species and ecosystems, and making timely and unbiased management decisions based upon the best scientific information available. We are committed to working with Federal partners to provide the depth of resources and expertise needed to address the challenges facing expansion of aquaculture in the United States. In keeping with the policy of encouraging sustainable aquaculture while protecting wild species and ecosystems, NMFS offers the attached comments on the Park Service's DEIS.

Thank you for consideration of our comments and recommendations. If you have any questions regarding our comments please contact Monica DeAngelis, 562-980-3232, Monica.DeAngelis@noaa.gov or Diane Windham, 916-930-3619, Diane.Windham@noaa.gov.

Sincerely,



for Rodney R. McInnis
Regional Administrator

Enclosure

**Enclosure: National Marine Fisheries Service Comments on the Draft
Environmental Impact Statement for Drakes Bay Oyster Company Special Use
Permit**

General Comments

The design of the program to monitor harbor seal abundances and disturbance events at sub-sites within the Estero does not permit explicit tests of the impacts of mariculture. The disturbance data appear to have been collected during surveys designed primarily to monitor seal abundance trends, and observations of disturbance are not sufficiently representative to infer the proportionate contribution of mariculture-related disturbance relative to other sources of disturbance to hauled-out seals. NMFS recommends a reevaluation of monitoring protocols if the intent is to collect information regarding disturbances and potential impacts at the individual level, stock, and/or population level.

The EIS does not take into account nor provide any detailed analysis of other human influenced impacts to the ecosystem at the Estero. In Brasseur and Fedak (2003), tagged seals showed a 50% reduction in use of the area compared to use of the same area in years with less recreational boat traffic, and these disturbances also appeared to influence diving behavior. It is not clear how close the oyster rack and oyster bag areas are within Drake Estero to the sand flats used by harbor seals as haul-out sites. NMFS recommends evaluating the 100 yard recommended distance. It is important to recognize that the analysis showing a relationship between mariculture activities and a decline in the mean seal attendance at two of three haul-out subsites in Drakes Estero does not demonstrate cause and effect in the DEIS. NMFS recommends that data be provided on this topic. Potential negative effects of mariculture operations and activities on the harbor seal population represent the most serious concern expressed in the DEIS, which cannot be fully evaluated because these effects have not been directly investigated. NMFS supports precautionary measures to reduce the likelihood of disturbance of seals which are consistent with current management practices in the U.S.

NMFS found that some important information is missing or has been overlooked in the DEIS. NMFS provides additional references in the comments below and recommends that the NPS review these references and expand on the impacts analysis in the final EIS. Many of the ecosystem services provided by oyster aquaculture in Drakes Estero have only been touched on lightly, and NMFS hopes that the comments below are helpful in that regard.

Specific Comments

Chapter 1, Page 21

"In early December 2009, NPS and CCC issued letters of violation to DBOC for placement of Manila clam bags within one of the harbor seal exclusion areas (NPS 2009cxx; CCC 2009axxi). In response, DBOC stated that clam bags had been placed within a harbor seal protection area because their global positioning system (GPS)

coordinates were misread and the misplaced clams would be immediately removed (DBOC 2009axxii)."

In this instance: the document does not 1) report whether any disturbances were recorded during this time, 2) which harbor seal exclusion area; and, 3) with what proximity to the seals. This level of information could assist with determining appropriate distances that may minimize take as defined under the Marine Mammal Protection Act (1972).

Chapter 1, Page 25

"Commercial shellfish operations could potentially impact these species and their habitat through habitat competition, habitat improvement or degradation, noise and physical disruptions, and introduction of nonnative species."

Each of these points should be better described in the document, including how commercial shellfish operations may impact harbor seals as well as other potential activities that may or may not impact the harbor seals.

Page 32, Cultural Landscapes

NMFS recommends against dismissing cultural resources as a topic for further analysis. Oyster culturing in Drakes Estero pre-dates existence of the National Seashore; DBOC's facilities and structures provide a cultural landscape as well as a culturally historical experience for park visitors. Impacts of the alternatives on cultural resources need to be analyzed because the project objectives stated on page 5 include "manage natural and cultural resources to support their protection, restoration, and preservation." As stated in the DEIS (p. 32): "According to NPS-28: Cultural Resource Management Guideline (NPS 2002b), a cultural landscape is a reflection of human adaptation and use of natural resources and is often expressed in the way land is organized and divided, patterns of settlement, land use, systems of circulation, and the types of structures that are built. The character of a cultural landscape is defined both by physical materials, such as roads, building, walls, and vegetation, and by use reflecting cultural values and traditions."

Page 37, Relevant Federal Laws and Policies

Please add the National Aquaculture Act of 1980, as amended, as a relevant law to be considered in the laws and policies informing this EIS. The National Aquaculture Act of 1980, as amended (16 U.S.C. 2801, et seq.), which applies to all federal agencies, states that it is "in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States." The purpose of the act includes "encouraging aquaculture activities and programs in both the public and private sectors of the economy; that will result in increased aquacultural production, the coordination of domestic aquaculture efforts, the opportunities, and other national benefits."

Chapter 2, Page 61

"The lease boundaries were drawn prior to creation of the harbor seal protection areas designated in the 2008 SUP. Another concern with the original lease boundaries is that they were drawn without the aid of technology. It should be noted that the lease boundaries were also identified in the SUP as the offshore permit area. DBOC asserts

that the original mapping mistakenly excluded five of the racks in Bed 6 that were in existence at the time (DBOC 2011eii). Although most correspondence has cited five racks outside of the existing lease areas, the GIS data provided by DBOC and being used to support the development of this EIS indicates six racks outside the lease boundaries."

The document does not describe how the harbor seal protection areas were designated in the 2008 SUP. NMFS recommends that the boundaries of the harbor seal protection areas be reviewed. In addition, it is not clear if the harbor seal protection area encompass all areas where harbor seals have been observed to haul out or only the major areas with large numbers of harbor seals. The maps should also designate which haul out sites are used as rookeries during pupping season. In addition, NMFS recommends that suitable haul out sites for harbor seals that may not currently be used by harbor seals be described in the document and mapped. This will aid in review of the potential for more haul out sites to be available as described in Alternative A. Both the harbor seal protection areas and the lease boundaries should be mapped using the same program to aid in comparison. NPS should explain why six racks are considered outside of the lease boundaries if almost all correspondence has cited five, or update the information regarding the request to adjust the boundary to Lease M-438-01, if it has been finalized. A reference should be provided.

Chapter 3, Page 179, Harbor Seals

"Monitoring objectives have often included detection of changes to population size, evaluating reproductive success, and identifying anthropogenic or environmental factors that affect the existing population."

NPS should provide documentation that there has been an effect on the reproductive success of harbor seals at the Estero through the monitoring objectives.

"Population size and reproductive success of harbor seals can be attributed to a number of factors, one of which is the availability of high quality breeding habitat."

NPS should provide details on habitat quality and how it may or may not relate to the Estero. Drakes Estero represents an important site for harbor seals, supporting about 20% of the mainland California population, thus a comparison of the present habitat quality and the future habitat quality for each of the Alternatives should be discussed.

"Seal abundance at haul-outs is influenced by multiple factors, including time of day, tide level, current direction, weather, season, year, disease outbreaks, disturbances from other wildlife, and human activities (Yochem et al. 1987; Suryan and Harvey 1999; Thompson, Van Parijs, and Kovacs 2001; Grigg et al. 2004; Hayward et al. 2005; Seuront and Prinzevalli 2005; NAS 2009). Environmental factors such as El Niño–Southern Oscillation events can affect attendance and reproduction (Trillmich and Ono 1991; Sydeman and Allen 1999) due to the changes in weather patterns and ocean temperatures that usually accompany this Pacific Ocean phenomenon."

It is not clear if the protocol to collect data on harbor seals in the Estero considered these factors and how these factors may or may not influence the numbers of seals hauled out and anthropogenic disturbances versus non-manmade disturbances (*i.e.*, presence of a predator). NMFS recommends that these factors be considered and analyzed in the document under each of the alternatives.

"Human activities can disturb seals at haul-out sites, causing changes in seal abundance, distribution, and behavior, and can even cause abandonment (Suryan and Harvey 1999; Grigg et al. 2002; Seuront and Prinzivalli 2005; Johnson and Acevedo-Gutierrez 2007)."

NMFS is familiar with these peer-reviewed articles, but harbor seals are still hauling out at the Estero. Based on the data provided in the EIS, it is difficult to assess the future haul out potential that the Estero may have or whether the current environment has depressed this potential. Haul-out sites in Drakes Estero and adjacent to Estero according to the EIS have been divided into eight subsites based on habitat conditions. The EIS does not detail what these habitat conditions may be and the importance of these conditions to the environment for hauling out. During a single day, seals can move from one subsite to another. NMFS recommends a discussion on how movement from these subsites may be impacted by any of the proposed Alternatives.

Chapter 3, Page 181, Harbor Seals

"The document is under internal review by MMC. This report will be reviewed and considered as part of the NEPA process for this EIS when it becomes available."

NMFS supports the consideration of this document.

"Between spring 2007 and 2010, more than 250,000 digital photographs were taken from remotely deployed cameras overlooking harbor seal haul-out sites in Drakes Estero. The photographs were taken in one minute intervals. Because the collection of these photos was not based on documented protocols and procedures, the body of photographs does not meet the Department's standards for a scientific product. As a result, the photographs have not been relied upon in this EIS. These photographs are posted and available for review on the NPS website at http://www.nps.gov/pore/parkmgmt/planning_reading_room_photographs_videos.htm."

NMFS recommends that the EIS provide information on which photographs, if any, were analyzed for impacts to harbor seals. NMFS was unable to review all 250,000 photographs and was not able to know which photographs were of importance for analysis purposes.

Chapter 3, Page 206

"High ambient sound levels from human voices, and sound events associated with human activities (e.g., driving cars, hiking), have been observed to have negative population-level, behavioral, and habitat-use consequences in many species (Frid and Dill 2002; Landon et al. 2003; Habib, Bayne, and Boutin 2007)."

The term "high ambient sound" is confusing. If the human voices are audible above the ambient sound, then that should be discussed in detail. If use of the term "high ambient sound" is meant to indicate that the ambient sound at Drake's is higher than in other areas, this comparison should be made and measurements provided.

Chapter 3, Page 206

"The impacts of underwater noise on marine mammals have been widely documented during the past 40 years, and have been the subject of three reports by the NAS (NAS 2003)."

NPS should provide a detailed description of all activities that may cause underwater noise that may impact marine mammals in the Estero. NPS should also provide information on how the measurements were obtained, calculated, and modeled. The noise threshold that is being used to determine potential behavioral changes, temporary threshold shift, or permanent threshold shift should also be provided and mapped with the location of the sound source and the distance the sound propagates in the environment, taking into consideration the specific factors that may influence sound propagation in the Estero.

Chapter 3, Page 213

"Visitors to the area use Drakes Estero and its environs for recreational activities such as kayaking and hiking. Drakes Estero is open annually to kayakers from July 1 to February 28. Closures are in place from March 1 to June 30 to protect harbor seals during pupping season."

NMFS supports efforts to minimize impacts to harbor seals, particularly during pupping season.

Chapter 3, Page 227

"Seashore staff are responsible for ensuring that closure policies within Drakes Estero are adhered to during harbor seal pupping season. Harbor seal pupping season occurs within Drakes Estero between March 1 and June 30. During this period, all recreational nonmotorized boats, including kayaks, are prohibited from entering Drakes Estero."

NMFS and the USFWS are the Federal agencies with statutory responsibility under the Marine Mammal Protection Act (MMPA) and Endangered Species Act. , NMFS is the agency responsible under the MMPA for harbor seal conservation. NMFS supports measure to minimize impacts to harbor seals and encourages the NPS to work directly with NMFS Southwest Regional Office regarding development of harbor seal conservation and management measures.

Chapter 4, Page 233, General Analysis Methods

"This analysis incorporates the best available scientific literature applicable to the region and setting, the resources being evaluated, and the actions being considered in the alternatives."

There are limited references available that pertain specifically to Drakes Estero, thus, NMFS recommends that best available scientific literature include information from other, similar geographic areas, where it is logical to infer similar results; such literature should not be treated as not meeting a scientific standard. There is an abundance of scientific literature addressing oyster growing in esteros and estuaries, with similar, if not the same, species addressed including Pacific oyster, eelgrass, harbor seals, etc. NMFS provides some references and can provide additional references. In the absence of available geographically-specific scientific literature, NMFS encourages the NPS to utilize such similar sources of information.

Chapter 4, Page 234, Baseline for Comparison

The DEIS states that "...the term "baseline" refers to the condition against which a change is being compared for assessment of impact in this EIS. It should not be confused with other definitions of the term." The baseline against which the no-action alternative is assessed is generally existing conditions. This is consistent with DOI regulations guiding the implementation of NEPA, which state:

"The analysis of the effects of the no-action alternative may be documented by contrasting the current condition and expected future condition should the proposed action not be undertaken with the impacts of the proposed action and any reasonable alternatives."

However, the description continues "The action alternatives, on the other hand, are generally using the no-action conditions as the baseline condition. In other words, the analysis of the action alternatives may be documented by contrasting the expected future conditions under each action alternative to the expected future conditions under the no-action alternative."

This approach to the defining of, and comparing alternatives to different baselines, is unusual. It is common practice in NEPA documents to compare all alternatives to one baseline defined as existing conditions. NMFS questions whether it is appropriate to compare the impacts of one alternative to one baseline, and then compare impacts of other alternatives to a different baseline in the DEIS. NMFS recommends all the alternatives be compared to the existing conditions baseline. Please see sections 1502.14, 1502.15, and 1502.16 in the CEQ regulations at: <http://ceq.hss.doe.gov/ceq/regulations/regulations.html>.

Chapter 4, Page 235, Duration of Impact

NMFS recommends modification of the methodology to consider the extent to which adverse impacts are reversible. The methodology for assessing impacts that is described in Chapter 4 defines long-term impacts as any impact lasting longer than 1 year. This breakout between short- and long-term impacts is not useful in terms of evaluating the ability of natural systems to recover from any effects incidental to ongoing operations of DBOC over a 10-year period – e.g., effects on eelgrass from boat traffic or presence of gear on the site. Permit conditions could minimize impacts on eelgrass, and mitigation measures could accelerate recovery from any scarring or other effects incidental to

operations. NMFS is interested in working with NPS to develop appropriate permit conditions and mitigation measures.

Chapter 4, Page 236

“Alternative A: All 95 racks would be removed, including approximately 4,700 posts (2-inch by 6-inch boards) and more than 179,000 linear feet (approximately 5 miles) of pressure-treated lumber would be removed (this is anticipated to take one to two months outside the harbor seal pupping season, March 1 to June 30).”

The EIS should provide information regarding the impact to removing the 95 racks, including the timing, the type of equipment necessary to remove the racks, etc. These activities should be assessed to determine potential impacts to harbor seals.

Note: Since Alternatives B, C, and D have similar, if not identical impacts, all comments for Alternative B are applicable to C, D, and E.

Chapter 4, Page 237

“Closure of the lateral channel during the harbor seal pupping season (March 1–June 30). Maintenance of a 100-yard buffer from any hauled-out harbor seal.”

NPS should provide an analysis of how closure of the lateral channel during the pupping season would decrease the potential risk of disturbance to harbor seals. NPS should discuss the potential impacts of closing the lateral channel if other areas receive higher traffic and discuss the potential impacts of the proximity of harbor seal haul outs to boat traffic areas (i.e. could other harbor seal areas be impacted during the pupping season). In addition, the 100-yard buffer may need to be reviewed. NMFS offers its expertise on this matter and would support mitigation measures that would limit activities during pupping season (which is very similar to mitigation measures NMFS requires for MMPA incidental take authorizations).

Chapter 4, Page 241, Human-cause Noise Sources (Other than DBOC)

“Other ongoing sources of noise in the Estero (DBOC-related noise is evaluated as an impact topic) such as overflights and use of cars along Sir Francis Drake Boulevard, has the potential to impact resources in and around the project area. These actions could impact wildlife and wildlife habitat (seals and birds), soundscapes, and visitor experience and recreation.”

NPS should provide further details regarding overflights and how they may impact seals (i.e. potential noise levels, height of aircraft, etc.).

Chapter 4, Page 242, Planning and Management Activities

“Past, present, and future planning and management activities at the park include the following projects/activities: New GMP, Adapting Drakes Beach Visitor Access Facilities to Accommodate Anticipated Coastal Change to Improve Natural Coastal Process, Abbotts Lagoon Coastal Dune Restoration Project, Regular trail maintenance, Approval of research permits. These actions could impact eelgrass, wildlife and wildlife habitat

(harbor seals and birds), special-status species, soundscapes, wilderness, visitor experience and recreation, and NPS operations."

If "take" of harbor seals may occur as a result of these management activities, NPS should contact NMFS to determine if an MMPA incidental take authorization is needed.

Chapter 4,, Page 243, Expansion of Mariculture within Humboldt Bay, California (under Past, Present, and Reasonably Foreseeable Actions in the CUMULATIVE IMPACT ANALYSIS METHODOLOGY Section)

The DEIS discusses the potential Humboldt Bay Harbor, Recreation and Conservation District's pre-permitting studies for possible expansion of shellfish leases in Humboldt Bay, which has been awarded a \$200,000 grant from the Headwaters Fund. It is unclear why a project that is not within or even remotely near Drakes Bay Estero is included in this section. While Humboldt Bay growers may provide up to approximately 70% of CA's oysters, the fact remains that CA growers are not able to meet demand. Bottom leases from the State of CA are in a state of flux as the Fish and Game Commission updates the bottom lease template; current growers in the Point Reyes area have not been able to expand their operations and are unable to meet demand, whether it is localized or not. As has been discussed, seafood demand far exceeds the United State's ability to meet it. The United States imports 84% of our seafood, and about 50% of that is met through imports of foreign (and often unregulated) aquaculture products. It is inaccurate to assume that growers in the Point Reyes area could increase their production to make up for the loss of DBOC, or employ former DBOC employees, as their operations aren't able to expand currently (J. Finger, Hog Island Oyster Co., pers. comm. 2010). Similarly, it is unrealistic to assume that the Humboldt Bay proposed shellfish expansion, if permitted, could compensate for the loss of DBOC at the local level. The positive impacts of an expanded Humboldt Bay shellfish industry would not provide economic benefits to the local businesses and employees in the Point Reyes area, provide tourism dollars to the Point Reyes local economy, nor satisfy localized demand for oyster products - it would potentially provide economic benefits to the Humboldt County area.

Chapter 4, Page 244, CDFG Marine Life Protection Act Initiative

"The Estero de Limantour SMR prohibits take of any living marine resource (CDFG 2010c)."

NPS should provide a definition for the term "take" as it is used in this context.

Chapter 4, Page 244

"Under the MMPA, if an activity is determined to be harassment under the above criteria, a specific permit called an Incidental Harassment Authorization may be required."

The activities that may cause marine mammal behavioral disturbance or harassment need to be analyzed and NMFS should be contacted to discuss the possible issuance of an Incidental Harassment Authorization.

Chapter 4, Pages 250-259, Impacts of Alternatives A, B, C, and D, Impact Analysis, Wetlands

The DEIS cites Bullard, Lambert, et al. 2007, in stating that the removal of "...up to 142 acres of bags, racks, and other shellfish cultivation equipment from Drakes Estero would also reduce the potential introduction of noxious species such as the exotic tunicate *Didemnum*, which has been shown to displace habitat for naturally occurring benthic organisms around the commercial shellfish operations infrastructure." It is important to note that none of the sites surveyed in this reference included any sites in Drakes Estero or neighboring shellfish operations in the vicinity. While it is wise to manage shellfish operations to avoid the introduction of such exotic species, this can be addressed by use of best management practices in the shellfish industry. Some efforts that may be effective in removing other fouling organisms from aquaculture gear and shellfish stocks include dessication and mild acid dips. Careful management practices could also potentially limit spread of noxious species. NMFS is willing to work closely with DBOC and the NPS to identify and assure implementation of best management practices at the DBOC operation.

NMFS believes that the habitat value of shellfish aquaculture gear has not been adequately addressed in the DEIS. NMFS refers the NPS to Dealtris, Kilpatrick, and Rheault (Dec. 2004), who's findings indicate "...that shellfish aquaculture gear provides habitat for many organisms throughout the year, and is especially beneficial to ecosystems that support native species of recreationally and commercially important fish and invertebrates in their early life stages." They conclude that "...shellfish aquaculture gear has substantially greater habitat value than a shallow nonvegetated seabed, and has habitat value at least equal to and possibly superior to submerged aquatic vegetation." In another paper by the same authors, they determined that shellfish aquaculture gear provides a structured habitat protecting juvenile fish from predation as well as substrate for some forage species that fish and invertebrates feed upon. The authors found significantly higher organism abundance and higher species diversity in shellfish aquaculture than in submerged aquatic vegetation, and thus they conclude that shellfish aquaculture gear had habitat value equal to or possibly greater than submerged aquatic vegetation (Dealtris, Kilpatrick, and Rheault 2007).

NMFS recommends a more detailed examination of the various sources of impacts to the wetlands of Drakes Estero, in addition to addressing the impacts from DBOC, in order to fairly assess sources and degree of impacts relative to DBOC. Dumbauld et al. 2009 point to the fact that water quality is impaired in some West Coast shellfish growing areas, but that this is more often due to presence of fecal coliforms. Additionally, NMFS suggests that the NPS further examine park visitor traffic and recreational activities as it relates to wetland impacts; in particular, the effects of kayakers in Drakes Estero, the effects of launching kayaks from wetland areas, and potential foot-traffic trampling on wetland plants and mudflats.

The water quality benefits from oyster growing in Drakes Estero should be described in greater detail. The resilience of Drakes Estero – the ability to withstand and recover from a variety of naturally occurring and human induced actions –should be described in terms of all potential impacts. Additional references would enhance the assessments in this

section. Dumbauld et al. 2009 states that "...bivalve aquaculture does not remove area from the estuary or degrade water quality, and thus is less likely to undermine resilience." They go on to suggest that bivalve aquaculture hasn't been linked to "...reduced adaptive capacity of the larger ecological system."

Overall, NMFS views shellfish aquaculture as an environmentally sustainable activity in Drakes Estero and encourages the NPS to provide more in-depth information regarding to what degree other human activities, in addition to the already described activities, have the potential to degrade the ecosystem health of Drakes Estero, including impacts from park visitors/recreationists.

Chapter 4, Page 262-272, Impacts of Alternatives A, B, C, and D, Impacts on Eelgrass

NMFS suggests that the NPS provide a more in-depth analysis of the ecosystem services provided by oyster culturing, in terms of beneficial impacts to eelgrass. The DEIS focuses on negative impacts and appears to have overlooked much information regarding the beneficial ecosystem services provided by oyster culture that are evident in the DEIS references.

The DEIS refers to use of aerial photographs of eelgrass scarring – since the NPS did not utilize over 200,000 digital photographs of harbor seal activity in Drakes Estero, due to the fact that these photos did not meet the NPS protocol or standard for "scientific evidence", the NPS should explain the protocol or standards that allow the use of these aerial photographs but preclude the use of the other photo database.

The DEIS suggests that Alternative A (No Action Alternative) would result in long-term beneficial impacts on eelgrass habitat. However, the NAS report (2009) states that "Nevertheless, removal of the Pacific oysters and nonnative clams under culture and all the structures used in the culture process would carry the consequences of removing the direct and indirect influences of the biochemical processes now provided by the filtration, excretion, and biodeposition of the shellfish and the influences of structural substrates of the oysters and the racks and bags that now hold them." Please see comments and references in the **Impacts on Wetlands** section, above. Additionally, the NAS report suggests that even though the estero has excellent water quality due in part to a strong tidal flux, the filtration provided by the cultured oysters likely lowers turbidity, which is beneficial to eelgrass production. Kaiser (2001, *in* NAS 2009) also suggests that shellfish cultivation processes have "...a generally positive influence on the overall water quality of a system." Beneficial water quality effects from shellfish culturing provides buffering from events such as storm turbidity or phytoplankton blooms, resulting in enhanced water quality and clarity, and potentially increased light penetration (DeAngelis, 1986 *in* NAS 2009, Rice 2001, Connecticut Sea Grant 2009/2020), which in turn promotes the growth and spread of eelgrass. Further, the NAS report clarifies that many populations of seagrass along the west coast demonstrate an increased abundance trend, including Drakes Estero.

Typically, eelgrass is absent directly under the oyster culture structures, but it appears the scale of these losses is tied directly to the scale and density of the structures, resulting in small reductions in eelgrass density and cover (NAS, 2009). The overall small-scale culturing footprint of DBOC "...suggests that these effects would be localized." In fact, the NAS report states that the estimate of eelgrass loss from propeller scars is less than 8% of total eelgrass cover (NPS, 2007e; Brown and Becker 2007 *in* NAS 2009). The amount of eelgrass in Drakes Estero appears to have approximately doubled over the years of oyster cultivation in the estero. While there are localized impacts from eelgrass coverage under the areas of oyster cultivation, the overall health of eelgrass in the estero appears to be very good, apparently owing largely to the tidal flux and good water quality. Without the water quality and filtration benefits from the oyster culturing in Drakes Estero (which pre-dates NPS presence), NMFS questions whether the current health of eelgrass would be as good. In fact, when compared to eelgrass beds in the Estero de Limatour, which has no oyster culturing, AMS (2002) found that sites in Drakes Estero showed higher eelgrass blade counts, again suggesting the beneficial effects of oyster culturing on eelgrass in Drakes Estero.

Chapter 4, Page 286-293, Impacts on Wildlife and Wildlife Habitat: Fish Alternatives A, B, C, and D

As described above, in the **Eelgrass** section, it appears that the health of Drakes Estero and its abundant eelgrass beds may be benefitting from the oyster culture being conducted there. There are no records in NMFS' files to indicate that DBOC is impacting the eelgrass to the degree that the eelgrass is not healthy, or that fish species of NMFS' concern are negatively impacted, including ESA-listed salmonids, nor does it appear there are significant impacts to EFH in Drakes Estero overall. The water quality and filtration services from oyster cultivation appear to support healthy eelgrass populations, and thus provide habitat and cover for fish typically found in Drakes Estero. Please see the additional comments and references in the **Eelgrass** section.

Chapter 4, page 294, Methodology

"This section summarizes the impacts on Pacific harbor seals from the actions that would potentially occur under each alternative. In consideration of the populations of harbor seals found within the project area as discussed in chapter 3, impacts are evaluated in the context of the type of impact (direct, indirect), the nature of the impact (i.e., type of disturbance to wildlife and wildlife habitat), the quality and amount of harbor seal habitat impacted, and the potential for risks posed by proposed actions (e.g., introduction of nonnative species)."

The NPS reports on harbor seals are not referenced as a data source in this document.

Chapter 4, page 295, Impacts of Alternative A

"The elimination of DBOC boat traffic (up to 12 trips per day, six days per week), especially during harbor seal pupping season (March 1 through June 30), coupled with ongoing restrictions on recreational access during the same time, would likely result in beneficial impacts on harbor seals by reducing human disturbance and displacement effects during important harbor seal reproductive periods (Suryan and Harvey 1999)."

NMFS believes that the removal of the oyster facility should be considered an action. The no-action alternative would leave activities at the current level and should be analyzed as such for this EIS. NPS should describe the potential beneficial impacts expected by reducing human disturbance and displacement effects. Typically, as a minimization measure in our permits, NMFS does take into consideration a reduction or elimination of activities that may impact seals during pupping season. It is not clear from this document what activities may cause take of harbor seals, as defined under the MMPA. NMFS offers our expertise to NPS to help address potential disturbance to seals. The DEIS does not consider what impact elimination of oyster activities or recreational activities may have on deterring other possible impacts to harbor seals (*i.e.*, does the presence of humans deter potential predators to harbor seal; would the cessation of oyster activities increase the number of coyotes that could predate pups?).

“Becker, Press, and Allen (2011) show harbor seal haul-out areas documented in the Estero, including along the entire lateral channel in the central portion of Drakes Estero. Discontinuing operations would remove bags and boat traffic from this area, allowing for potential expansion of use areas by the seals.”

The west and middle areas of the lateral channel are shallow and full of dense eelgrass (as another map in the draft EIS clearly shows). The harbor seals haul out where they have hauled out for many years – from the deep east end of the lateral channel onto a large beach. It is recommended that the document describe suitable habitat for harbor seals, determine whether this suitable habitat is available in the Estero, whether there has been historical use of these areas prior to anthropogenic impacts, etc. It is difficult to predict whether harbor seals would colonize a new area, but if the habitat has characteristics that have been shown to be important components of harbor seal haul-out sites, those areas should be described and mapped.

Chapter 4, page 296, Impacts of Alternative A

“Due to the removal of potentially disruptive activities associated with DBOC within Drakes Estero, alternative A would be expected to result in beneficial impacts on harbor seals. Removal of shellfish infrastructure from within Drakes Estero may require the use of motorboats for a period of up to two months. This disturbance would continue to generate the human-caused noise that currently disrupts harbor seals, but would be conducted outside of the harbor seal pupping season to minimize adverse impacts.”

NMFS recommends that these disturbances should be characterized and described in more detail in the document with references provided.

“Under alternative A, NPS would install a gate to prevent all boat-related recreational access to Drakes Estero during harbor seal pupping season (March 1- June 30 annually). The placement of a locked gate restricting boat access to Drakes Estero during pupping season would be an effective deterrent, preventing adverse impacts on harbor seals from boat use during pupping season.”

NPS should provide information as to why a locked gate would not be possible for any of the other alternatives.

“This restriction on recreational access to Drakes Estero would be expected to have beneficial impacts on harbor seals. As described above, alternative A would result in long-term beneficial impacts on harbor seals because of the reduced disturbance to seals that would result from the termination of DBOC operations and associated human activities within Drakes Estero. Alternative A may also result in short-term minor adverse impacts because while impacts to harbor seals would continue, the impacts associated with rack removal would be localized and slightly detectable, and would not affect the overall structure of the natural community.”

The long-term beneficial impacts need to be described and evidence needs to be provided.

Chapter 4, page 296, Cumulative Impact Analysis

“Past, present, and reasonably foreseeable future actions have the potential to impact harbor seals and harbor seal habitat within the project area. These actions include kayaking, planning and management activities, and the CDFG MLPA initiative.”

Details on the planning and management activities need to be provided and what component of those activities that may impact harbor seals needs to be analyzed.

“While harbor seal disturbances could still occur outside of the pupping season, such disturbances are less likely to have population-level effects during that time of year.”

NPS should provide a reference for the implication that disturbances are having population-level effects and/or that adverse population-level effects have been documented at the Estero.

“Some limited use of motorized boats within Drakes Estero may take place for research or administrative purposes.”

NPS should specify the research and administrative purposes that may impact harbor seals as it is difficult for NMFS to determine based on the information provided whether or not an MMPA Incidental Harassment Authorization (IHA) may be necessary.

Chapter 4, page 297, Cumulative Impact Analysis

“Alternative A, in combination with the MLPA would result in only recreational clamming allowed within the Estero, thus reducing potential disturbance-related impacts.”

NPS should analyze and discuss the potential disturbance to harbor seals caused by recreational clamming and describe how these potential disturbances would be managed.

Chapter 4, page 297, Alternative A, Conclusion

“Disturbance would be limited to recreational kayakers, hikers on the adjacent landscape, and aircraft.”

NMFS recommends that these disturbances be described in detail and impacts to harbor seals analyzed.

“The cumulative impact would be long-term beneficial, and alternative A would contribute an appreciable beneficial increment to the overall cumulative impact. With respect to harbor seals, alternative A is consistent with relevant law and policy because removal of DBOC operations from Drakes Estero would remove an unnatural stimulus that currently affects harbor seal behavior. Additionally, the decrease in disturbance to this species would be consistent with MMPA (16 USC 1361 et seq., 1401–1407, 1538, 4107).”

NMFS recommends providing additional information on which relevant laws and policies are referred to in this statement and how these are consistent with the requirements of the MMPA for harbor seals.

Chapter 4, page 297, Impact Analysis, Alternative B

“Continued boat traffic DBOC operations would continue to be subject to the harbor seal protection protocol as part of the SUP. This protocol prohibits boat travel and general operations, including placement of bags, moorings, and installation of floating racks, within the established harbor seal protection areas (see figure 3-5). Other restrictions contained in the existing protocol, such as closure of the lateral channel (also shown on figure 3-5) during the harbor seal pupping season (March 1–June 30) and maintenance of a 100-yard buffer from any hauled-out harbor seal, would continue to be in effect.”

This analysis when compared to Alternative A's impact analysis is confusing as many details are missing from each analysis. NMFS suggests improving the impact analysis for comparative purposes.

Chapter 4, page 298, Impact Analysis, Alternative B

“Under alternative B, the current setback requirement of 100 yards from any hauled out seal (MMPA) would be retained. While the NAS 2009 indicates that larger setbacks are used in Europe, this setback is based, in part, on the MMPA standard, the scale of the Estero, and the ability of DBOC staff to reasonably see and recognize a hauled-out harbor seal.”

It is not clear what MMPA standard is being referred to here, as a requirement of maintaining at least a distance of 100 yards from harbor seals is not a requirement or a standard under the MMPA. If take occurs, than an IHA may be needed. If NPS wants to establish a set distance to avoid take, then NPS should work with NMFS to evaluate what distance would be appropriate.

“Lastly, there may be impacts on harbor seals related to underwater sounds produced by DBOC based on previous research on other marine mammals (NAS 2003). Alternative B would result in long-term moderate adverse impacts on harbor seals for another 10 years due to displacement effects within Drakes Estero of human activities associated with DBOC's operation and the potential for disturbances that are known to disrupt harbor seal behavior and displace seals. These impacts would be clearly detectable.”

NPS should provide detailed information on underwater sound produced by DBOC and analyze how it may impact harbor seals, including thresholds for a temporary threshold shift or permanent threshold shift. If masking could occur, NPS should provide information and analysis to determine the impacts of the masking. Based on the analysis in the DEIS it is not clear if there are impacts related to underwater sound or if there may be impacts. NPS should provide information on whether masking has been documented in the monitoring. In addition, in order to support the statement that impacts would be clearly detectable the EIS needs to provide specifics on how these impacts would be detected (monitoring, what thresholds would be used, etc.). If the impacts can be clearly detected, NPS should describe the research study that demonstrated detection of impacts.

Chapter 4, Page 294-303, Impacts on Wildlife and Wildlife Habitat: Harbor Seals, Alternative A, B, C, and D

NMFS notes that, with development and implementation of an interagency harbor seal protocol in 1992 at the site of DBOC, there has been no documentation in NMFS' files regarding disturbance of harbor seals related to operation of DBOC. In addition, there have been no reported violations of MMPA or law enforcement investigations on record. There does not appear to be any evidence of population-level effects from disturbance of the harbor seals in Drakes Estero; the estero's harbor seal population appears stable and healthy. NMFS encourages the NPS to expand the analysis to carefully examine and disclose other sources of disturbance to this seal population, including but not limited to kayaks landing on the sandbar haul-out area and general kayak activity in the estero, along with documentation of NPS enforcement of MMPA requirements with park visitors. In addition, NMFS recommends that NPS expand the analysis to examine populations of harbor seals at other locations that are subject to human disturbance for comparison.

NMFS understands that the Marine Mammal Commission (MMC) convened a panel to review the science used by the NPS in analyzing the Drakes Estero harbor seals, and that a report from the MMC should be forthcoming. NMFS recommends that completion of the final EIS be delayed until this report is available to the NPS and the public, so that the information in the report can be incorporated into the analysis by NPS and is made available to all parties reviewing the DEIS.

Chapter 4, Page 314-328, Impacts on Special Status Species, Alternatives A, B, C, and D, Central California Coho Salmon Critical Habitat, Central California Steelhead

Please see comments regarding Fish, above. NMFS has no documented concerns regarding DBOC related to potential impacts to Central Coho Salmon Critical Habitat or Central Valley Steelhead.

Chapter 4, Page 316

“During DBOC close out procedures, however, there would be an increase in traffic along the access road, as property and debris are removed from the site. This may cause a temporary increase in risk of vehicle strikes. This close out process is likely to take place outside the seasonal seal closure and last up to two months.”

This implies that vehicles may strike harbor seals. NPS should clarify how this is related to the harbor seal closure and how this may or may not benefit harbor seals.

Chapter 4, Page 321

“In addition, under alternative B, the NPS would not install a gate to enforce seasonal closures to recreational access to Drakes Estero during harbor seal pupping season. Thus, traffic levels over the access road would be expected to continue at current levels.”

As previously noted it is not clear why the gate cannot be installed and provide needed access when necessary during the harbor seal pupping season if installation of the gate is intended to regulate human water use near rookeries in the Estero.

Chapter 4, Page 337-349, Impacts on Water Quality Alternatives A, B, C, and D

Please see comments above in the **Wetlands** and the **Eelgrass** sections. In addition, NMFS suggests that the broader water quality issues described in this section can be addressed in partnership. The NPS, NMFS, CA Department of Fish and Game, California Coastal Commission, and Regional Water Quality Control Board can effectively work together with DBOC to formulate permit conditions and best management practices to address the issues and improve water quality conditions in Drakes Estero. NMFS is available to provide expertise in such an effort.

Chapter 4, Page 354

“Offshore noise-generating operations would include continued motorboat traffic in Drakes Estero.”

Although the EIS does provide information regarding dBA levels, these dBA levels do not specify the distance these sound emitters could operate compared to where seals are expected to haul out (i.e. what the received level from the sound source may be at the haul out sites) and how it corresponds to thresholds of 90dBA for in-air for harbor seals.

Figure 4-2 shows how sounds would dissipate from a pneumatic drill operating on the dock at the onshore facilities. Two noise contour levels were selected for these maps.

NMFS recommends this figure include harbor seal haul out sites to determine if there is any potential for overlap.

Table 4-2. Figure 4-1 and Figure 4-2

NPS should provide additional information describing how the noise generated and the propagation from the sound source was estimated or modeled.

Chapter 4, Page 359

“Negative population-level, behavioral, and habitat-use consequences of higher ambient sound levels from human voices, along with sound events associated with human activities (motorists, hikers), have been observed in many species (Frid and Dill 2002; Habib, Bayne, and Boutin 2007). Human activities can disturb harbor seals at haul-out sites, causing changes in harbor seal abundance, distribution, and behavior, and can even cause abandonment (Suryan and Harvey 1999; Grigg et al. 2002; Seuront and Prinzivalli 2005; Johnson and Acevedo-Gutierrez 2007). Finally, demolition of the damaged main dock and construction of the proposed dock would require the-temporary use (less than one month assuming six days per week, 8 hours per day) of heavy vehicles, which typically emit sound levels between 60 and 80 dBA, depending on which equipment is necessary-(FHWA 2006). This would cause a temporary adverse impact on the natural soundscape.”

NPS should indicate whether it expects that these sound sources would be perceived by the harbor seals and describe the potential impacts .

Chapter 4, Page 360

“The use of heavy machinery would be at a level that would cause vocal communication to be difficult at distances of less than 16 feet.”

NPS should provide information on the proximity of this activity to the seals and whether it is assumed that there will be no auditory damage to seals' hearing. In addition, NPS should provide information on whether this may result in masking. NPS should describe in detail any potential impacts to the seals of the visual component of the machinery or activities, which may cause seals to flush from haulout areas.

Chapter 4, Page 368, Impacts on Wilderness Alternative A, B, C, and D

The DEIS mentions that human activities can cause disturbance of harbor seals and changes in harbor seal behavior, distribution and abundance, and even site abandonment. It would be useful for the NPS to report on (or conduct a study if it hasn't been addressed) the effects of human activities in Drakes Estero to harbor seals, beyond the effects from DBOC. The park has high visitation from various sectors of the public, among those are hikers and kayakers in the vicinity of DBOC. The kayak launch is adjacent to DBOC; it seems likely that kayakers could also unintentionally disturb harbor seals while kayaking in the estero. Information on rates of harbor seal disturbance correlated to park visitors and their activities would be most informative and would add to the body of knowledge regarding overall harbor seal disturbances.

The DEIS states that as discussed in greater detail under the impact topic of soundscapes, a motorboat in Drakes Estero produces a sound of 71 dBA at 50 feet (Noise Unlimited,

Inc. 1995). On a calm day, it may take over 3,200 feet (0.6 miles) for this sound to dissipate to natural sound levels. NPS should explain how this distance was calculated.

Chapter 4, Page 373

"Additionally, the generation of noise by DBOC operations, both onshore and within Drakes Estero, would have the potential to disturb birds and harbor seals."

NPS should provide additional information on which activities would generate the noise.

Chapter 4, Page 381, Impacts on Visitor Experience and Recreation

The DEIS states that approximately 50,000 people visit DBOC annually. Oyster culturing in Drakes Estero pre-dates the park presence. There is a long cultural history of oyster culturing in Drakes Estero that is not adequately addressed in the DEIS. Please see comments in the **Cultural Landscapes** section. NMFS recommends that the NPS expand this discussion in both sections.

The DEIS states that the gate would prohibit motorized boat access to the water during certain times, but would allow visitors to access Drakes Estero on foot. The proposed gate would allow visitors to access the site outside harbor seal pupping season (between July 1 and February 28). NMFS recommends providing this information in previous sections describing Alternative A as visitor access on foot should be analyzed or discounted for potential disturbance to harbor seals.

Chapter 4, Page 389-402, Impacts on Socioeconomic Resources, Alternative A, B, C, and D

The DEIS identifies a localized economic impact if DBOC is removed from Drakes Estero. Consistent with the NOAA National Aquaculture Policy, NMFS supports the development and maintenance of sustainable marine aquaculture. In a down-turned economy, the localized loss of jobs as well as the localized and statewide reduction in the availability of oysters, may be more significant than is represented in the DEIS. With up to 34% of oyster production in CA coming from DBOC, the removal of DBOC would be significant. The DEIS notes the potential permitting of a Humboldt Bay shellfish expansion proposal and assumes that such expansion can compensate for the loss of oyster availability from DBOC, should it be removed. This is a potential long-term outcome, but only if the proposal is successfully permitted. Initial feasibility studies are just getting underway for the Humboldt Bay shellfish expansion proposal and any actual permitting, leasing of shellfish growing areas, and availability of product is not realistic in the near future. In addition, such potential expansion does not benefit the local economy of the Point Reyes area. Potential jobs created in Humboldt Bay will not benefit displaced workers from DBOC, nor will the sale of Humboldt Bay shellfish benefit the Point Reyes area. Potential DBOC visitors will not inject funds into the local economy nor provide benefits to local tourism that is currently afforded. Please also see comments in the **Expansion of Mariculture within Humboldt Bay, California** section above.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

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POINT REYES NS

DEC 05 2011

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

Subject: Draft Environmental Impact Statement for the Drakes Bay Oyster Company Special Use Permit in Point Reyes National Seashore, Marin County, California (CEQ#20110328)

Dear Ms. Muldoon:

The Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (EIS) for the above action. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The Draft EIS analyzes four alternatives for issuance of a special-use permit for a commercial oyster operation in Drakes Estero in Point Reyes National Seashore. The intent of the EIS is to assist the National Park Service (NPS) in evaluating the environmental impacts of considering expiration or issuance of the special-permit. NPS has not identified a preferred alternative. EPA has rated all the alternatives in the Draft EIS as Lack of Objections (LO) (see enclosed "Summary of Rating Definitions").

We appreciate the opportunity to review this Draft EIS. When the Final EIS is released for public review, please send one hard copy and one CD to the address above (mail code: CED-2). Should you have any questions regarding our comments, please contact me at (415) 972-3521, or contact Stephanie Skophammer, the lead reviewer for the project. Stephanie can be reached at (415) 972-3098 or skophammer.stephanie@epa.gov.

Sincerely,

Kathleen Martyn Goforth, Manager
Environmental Review Office
Communities and Ecosystems Division

Enclosures: Summary of Rating Definitions

Cc: Brannon Ketcham, Point Reyes National Seashore
Melissa Stedeford, Project Manager

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

"Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.



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POINT REYES NS



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Southwest Region
 501 West Ocean Boulevard, Suite 4200
 Long Beach, California 90802-4213

DEC - 8 2011

DBOC SUP EIS

c/o Cicely Muldoon, Superintendent
 Point Reyes National Seashore
 1 Bear Valley Road
 Point Reyes Station, California 94956

Dear Ms. Muldoon:

In a letter dated November 17, 2011, NOAA's National Marine Fisheries Service (NMFS) provided comments on the National Park Service's Draft Environmental Impact Statement (DEIS) for Drakes Bay Oyster Company (DBOC) Special Use Permit (SUP), September 2011. NMFS provides the following points of clarification regarding our previous comment letter:

- NMFS' statement regarding impacts of DBOC operations on Essential Fish Habitat (EFH) in Drakes Estero was based on an initial review of information provided in the DEIS. NMFS will make a final determination regarding effects to EFH following a thorough evaluation of adverse effects to EFH completed as part of an EFH consultation for the proposed action pursuant to the EFH provisions of the Magnuson-Steven Fishery Conservation and Management Act.
- NMFS does not exclusively endorse the findings in Dealeris *et al.* (2004), but recognizes this information is part of the scientific literature available on the subject of aquaculture.
- NMFS does not have information indicating that water quality effects from the DBOC operations benefit the overall health of eelgrass in Drakes Estero. Similarly, NMFS does not have information suggesting that eelgrass would be harmed should DBOC operations cease.

Please consider these clarifying comments in conjunction with the NMFS November 17, 2011, comment letter.

In addition, although NMFS was unable to complete an extensive review of the recent Marine Mammal Commission (MMC) Report on Mariculture and Seals in Drake's Estero, NMFS supports the MMC's recommendation to conduct additional harbor seal disturbance studies and offer our expertise in the development of future study design and potential management/adaptive management plans that could be informed by these future studies.



Again, we thank you for the opportunity to comment on the National Park Service's DEIS and look forward to reviewing the final EIS. If you have any questions regarding these comments, please contact Korie Schaeffer, 707-575-6087, Korie.Schaeffer@noaa.gov, Diane Windham, 916-930-3619, Diane.Windham@noaa.gov, or Monica DeAngelis, 562-980-3232, Monica.DeAngelis@noaa.gov.

Sincerely,

A handwritten signature in blue ink that reads "Kevin Chin". The signature is written in a cursive style.

for Rodney R. McInnis
Regional Administrator



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

DEC 09 2011
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DEC - 8 2011

Regulatory Division

SUBJECT: File Number 2010-00116N

Draft EIS DBOC SUP
c/o Ms. Cicely Muldoon
National Park Service
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, California 94956

Dear Ms. Muldoon:

This is in response to the request for comments on the Draft Environmental Impact Statement (DEIS), dated September 2011, regarding the Special Use Permit for the Drakes Bay Oyster Company located at 17171 Sir Francis Drake Boulevard in the Town of Inverness, Marin County, California.

The U.S. Army Corps of Engineers (USACE) would like to emphasize that impacts to waters of the U.S., including wetlands, vegetated shallows, and open waters of the U.S., may be subject to regulation pursuant to Section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. Section 403) and/or Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). If a permit for activities is required and they do not fall under the Nationwide Permit program, an Individual Permit, processed pursuant to Section 10 RHA and/or Section 404 CWA, would be required. Projects resulting in the discharge of fill material into waters of the U.S. must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the CWA (33 U.S.C. Section 1344(b)).

USACE recommends that the above information be included in the Laws and Policies section for all Issues/Impact Topics analyzed in "Chapter 4: Environmental Consequences" which may have an impact on jurisdictional waters of the U.S., including wetlands, eelgrass, and portions of wildlife and wildlife habitat.

-2-

We look forward to continued cooperation 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,

gane m. Heelis

W Torrey A. DiCiro, P.E., PMP
Lietenant Colonel, U.S. Army
Commanding



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND GAME
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
www.dfg.ca.gov

EDMUND G. BROWN, Jr. Governor
CHARLTON H. BONHAM, Director



December 20, 2011

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

Subject: Comments on the draft Environmental Impact Statement for Drakes Bay Oyster Company

Dear Ms. Muldoon:

The Department of Fish and Game (Department) has reviewed the Draft Environmental Impact Statement (DEIS) for Drakes Bay Oyster Company (DBOC) Special Use Permit (SUP). The Department is serving as a cooperating agency on the project to provide the National Park Service (NPS) with technical assistance and available data specific to the DBOC's operation. The Department has special expertise in management and oversight of aquaculture in California. We offer the following comments and recommendations on this project in our role as a cooperating agency and as a trustee agency over the State's fish and wildlife resources.

Thank you for your consideration of this letter. The Department stands ready to work with all stakeholders in providing the requisite biological and program expertise on any proposed action involving the oyster farm to help move this situation to a final resolution.

As you know, the Fish and Game Commission (Commission) and Department have issued and administered the state water bottom leases in Drakes Estero since their creation in 1934. At this time, we have two general comments on the DEIS, which the NPS might find useful as it determines whether to continue this special use. Our specific comments in the attached appendix tier from the general comments in this letter.

First, we encourage NPS to acknowledge the potential benefits of shellfish aquaculture to the estuarine environment in Drakes Estero. For example, based on data analyzed by NPS staff, eelgrass coverage has approximately doubled in Drakes Estero from 1991 to 2007, suggesting aquaculture operations might not negatively impact estuary ecology or the eelgrass population. Second, given the intense scrutiny of and passionate debate about the oyster farm and NPS proposed actions, we urge careful attention to data and analysis of such data with regards to conclusions that aquaculture has or has not caused long-term impact to Pacific harbor seal colonies in Point Reyes National Seashore or eelgrass.

Conserving California's Wildlife Since 1870

Cicely Muldoon, Superintendent
Page 2 of 2
December 20, 2011

The Department is committed to working with you to ensure the DEIS contains the best-available data and resources to evaluate the potentially adverse and beneficial impacts of mariculture operations within Drakes Estero. To that end, we have included with this letter prior correspondence from the Department in 2007 and 2008 regarding our position about the ongoing issues between DBOC and the NPS. These letters clarify our view of management authority.

Thank you for the opportunity to provide comment on the Draft Environmental Impact Statement (EIS) for Drakes Bay Oyster Company (DBOC) Special Use Permit. Please see the enclosed table that provides more technical comments provided by Department staff. If you require additional information, please contact Ms. Kirsten Ramey, Marine Region Aquaculture Coordinator at (707) 445-5365 or via e-mail at kramey@dfg.ca.gov.

Sincerely,



Charlton H. Bonham
Director

Enclosures (3)

ec: Marija Vojkovich, Department of Fish and Game, Santa Barbara, CA
Joe Milton, Department of Fish and Game, Sacramento, CA
Kirsten L. Ramey, Department of Fish and Game, Eureka, CA

PUBLIC DRAFT

Point Reyes National Seashore Drakes Bay Oyster Company Special Use Permit EIS

Draft Environmental Impact Statement

Reviewer Office: Department of Fish and Game

Comments due: December 9, 2011

Reviewer	Page	Line	Comment/Proposed Revision
DFG	XXIII	Bullet 7	Include "At the expiration..." to clarify when the removal activities would be required
DFG	XXV	Bullet 1	Include "...unpermitted infrastructure, would remain until November 30, 2022" to clarify how long structures would remain.
DFG	7	Paragraph 2	The CDFG manages 16 shellfish leases held by 8 such operators
DFG	7	Paragraph 3, 1st sentence	Does this number include DBOC? If not, there are 9 operations (11 including DBOC). The 19 operations are not all on granted or private tidelands. The rest are private land-based facilities.
DFG	20	Paragraph 3	The original letter from Studdert to the FGC dated 8/6/93 requested manilla clams be added to lease M-438-01. This indicates there was no intent to limit clams to M-438-02 and that an error was made by the FGC when drafting the correspondence letter to the Lessee and that error was simply transferred forward to all the subsequent documents.
DFG	81	Paragraph 1, Last sentence	Can you include a mention of who the permitting agencies would be for this type of discharge to inform the reader?
DFG	84	Paragraph 5	Incorrect lease number
DFG	120	Preferred Alternative	It is unclear why NPS did not identify a preferred alternative in the Draft EIS. How will NPS determine whether input received from the public is objective? Why is NPS relying on public comment to select a preferred alternative?
DFG	127	Figure 2-14	Alternative B does not include the boat transit path as does Alternative C & D.
DFG	172	Last paragraph	It is important to note that the 2007 estimate of eelgrass coverage has approximately doubled since 1991 based on Brown and Becker 2007.
DFG	197	Last paragraph	Should 2010 read 2011 Management Plan...?
DFG	219	Paragraph 1	Some facilities are land-based and not on tide or submerged lands.
DFG	219	Paragraph 2	Change mariculture to shellfish because we have 1 kelp lease that is not part of the 18 count.
DFG	219	Paragraph 3	There are 19 operations on grant or private tide and submerged lands or are private land-based facilities. 9 operations are on granted or private tidelands and 10 are land-based facilities.
DFG	219	Last paragraph	The Humboldt Bay Harbor, Recreation and Conservation Act was passed in 1970. The formation of the District was in 1973.
DFG	220	Paragraph 1, Last sentence	DFG coordinates with the shellfish hatcheries on disease and health certifications. The CA Department of Public Health is the lead on certifying growing areas for shellfish.
DFG	220	Paragraph 1, Last sentence	Remove the words "... through an agreement with NPS, ..." and change to "... but it would continue to exercise oversight related to stocking..." The Department has this authority through law, not through an agreement with NPS; however, an agreement could be drafted to memorialize DFG's authority within PRNS.
DFG	220	Paragraph 1	This paragraph specifically discusses shellfish operations in Humboldt Bay, but there are other important shellfish growing areas in CA, which is the title of the section. In addition, the paragraph concludes with the discussion of the DBOC lease and NPS landowner jurisdiction which doesn't feel appropriate for this section.

DFG	220	Paragraph 1	FGC and DFG have not issued and administered, respectively leases to DBOC despite the fact the lands are owned by the U.S. The RUO contemplated that the leases could be renewed. The language of the RUO states "Upon expiration of the reserved term a special use permit may be issued for the continued occupancy of the property...provided, however, that such permit will run concurrently with and will terminate upon the expiration of State water bottom allotments assigned to the Vendor." Thus the state water bottom leases were renewed in 1979 and again in 2004 given that the RUO is valid until 2012.
DFG	222	Paragraph 1	In Humboldt Bay, the largest producer provides production information by gallons and DFG has inquired as to the method that the Humboldt Bay producers use, but has not received the conversion factors yet.
DFG	222	Last paragraph	In Humboldt Bay, all information reported to DFG has been in gallons.
DFG	223	Paragraph 1	It is true that DFG data has not been calculated consistently and is not inclusive of all statewide production; however, DFG's data is complete for all of Marin county which should be included in the socioeconomic analysis. Statewide shellfish production is appropriate to evaluate the success of the industry, but inappropriate when you are evaluating the effects of the loss of a local product on a local economy. DFG records between 2007-2009 show DBOC contributed 68% of total oysters and 63% within Marin County. NPS has all the data necessary to include the local economic analysis for shellfish production and if not, it can easily be provided.
DFG	223	Paragraph 2	The production rates for Drakes Estero are similar to production rates in Tomales Bay. Please make note that Tomales Bay production is a combined total of 10 leases held by 6 companies.
DFG	223	Paragraph 3	Humboldt Bay data reported to DFG has been in gallons
DFG	224	Table 3-7	It is unclear where the 32,500,000 number comes from in the Kuiper report. The report estimates 35.5 million with 250,000 imported oysters so that comes to 35,250,000. The number for total shellfish would need to be adjusted as well.
DFG	224	Table 3-7	The same issue with not using the same conversion rate is present in the Kuiper numbers. He assumed a 180 oysters per gallon average where that may not be the actual conversion rate for some producers. His report contains numbers from the same growers that DFG received production from, but his data has used a conversion rate of 180 which may overestimate actual production. Kuiper says 1 gallon of oysters has 180 in it, but in reality the company only produces 140 oysters in a gallon the numbers have been inflated in the Kuiper report. This needs to be identified and explained.
DFG	260	Eelgrass Section	It should be noted that the SUP 2008 placed a new restriction on boat use by DBOC that directed boat passage away from the "lateral channel" throughout the year, not just during the harbor seal pupping season. This redirected the oyster boats to a route over shallower eelgrass beds which has resulted in increased damage to eelgrass beds from propeller scars.
DFG	262	Paragraph 4	Brown and Becker 2007 concluded that the areal coverage of eelgrass in Drakes Estero has approximately doubled between 1991 and 2007.
DFG	263	Paragraph 1	There is no historic data on eelgrass so how can the document state "Recover of eelgrass..."? This implies that eelgrass was once present in that location when that is not known.
	263	Paragraph 3	Eelgrass would be expected to colonize NOT recolonize given the fact that there is no historic data on eelgrass coverage before mariculture operations were established.
	263	Paragraph 3	The document says recovery of eelgrass would provide additional habitat for fish communities where in Humboldt Bay, oyster structures were found to harbor more fish than either eelgrass or open mudflats (Pinnix et al., 2004).
	265	Paragraph 4	What methodology was used to determine eelgrass versus algae in the aerial photography?

DFG	266	Paragraph 1	Waddell 1964 studied the impacts of dredging culture methods on eelgrass recovery which is not applicable to Drakes Estero given that method is not used. In addition, Zieman 1976 studied turtle grass, a different species, in his evaluation of recovery rates based on disturbance from motor boats. This statement is misrepresenting the situation in Drakes Estero. The NAS report states "Based on existing data on growth and recovery of <i>Zostera marina</i> in Willapa Bay and elsewhere on the West coast, recovery from propeller scars should be rapid (weeks) for this species, unless the rhizomes were removed from the sediment (still less than 2 years based on above studies) or there was repeated scarring on a regularly travelled route."
DFG	266	Paragraph 1	Koch 2002 concluded that the negative impact of boat-generated waves on seagrass habitat quality was minimal. The strongest impact was at low tide when boat-generated waves resuspended a small fraction of total suspended solids, which redeposited in a few minutes resulting in little or no impact on the light availability. In fact, the boat-generated waves apparently caused epiphytes and particulate matter to be dislodged from the leaves creating a positive effect for the seagrasses. This study is incorrectly cited in the document.
DFG	266	Paragraph 2	The research conducted by Wechsler 2004 and Harbin-Ireland 2004 (as cited in NAS 2009) in Drakes Estero was not focused on eelgrass and no empirical data was collected to support the statement in the document that states "...shown to reduce coverage and density of eelgrass due to shading or preemption of space." There have been no studies in Drakes Estero that supports this statement. The studies that NAS uses were in Willapa Bay and involved long-line and stake culture.
DFG	266	Paragraph 2	Bag culture is present in intertidal areas and so avoids the eelgrass beds which grow from rhizomes in the subtidal sediments.
DFG	266	Paragraph 2	Tallis, et al. 2009 explored 3 cultured methods, dredged on-bottom, hand picked on-bottom and long line off-bottom. The only method in Drakes Estero that can be compared to this study is the long line method. Depending on long-line spacing, eelgrass in long line areas may occur at densities indistinguishable from nearby uncultivated areas. None of the studies cited in this paragraph evaluated bag culture.
DFG	266	Paragraph 3	Is there a reference to support the last two statements in this paragraph?
DFG	275	Paragraph 1	Hosack et al. 2006 found infaunal macrofauna in eelgrass, open mudflat, and oyster culture in Willapa Bay were not significantly different from each other. Ferraro and Cole 2007 found that oysters and eelgrass supported equally diverse assemblages of benthic species in Willapa Bay. In Humboldt Bay, diversity and abundance of infaunal invertebrates around long line culture were similar to those observed at eelgrass reference sites (Rumrill and Pouiton 2004).
DFG	279	Top of page	The only known hosts for <i>Haplosporidium nelsoni</i> (MSX disease) are <i>C. gigas</i> and <i>C. virginica</i> and do not present a risk to native mollusks.
DFG	279	Paragraph 3	Actually Herborg, et al. 2009 did not evaluate vectors for primary introduction of <i>D. vexillum</i> so has been mis-interpreted here.
DFG	295	Impact Analysis	Motorboat activities (assumed as a proxy for DBOC activities) make up 4% of the total disturbances in Drakes Estero over the 7 years of surveys during the breeding season. Other anthropogenic sources account for a total of 58.3% of all noted disturbances (data derived from Sarah Allen's presentation at the MMC Meeting on February 21, 2010). NPS states that the seashore receives more than 2 million visitors annually. The data suggests that the visitors to the park have a much greater influence on overall disturbances than the presence of motorboats within the estuary. Why is this not discussed under the cumulative impact analysis? It seems more appropriate that this is a long-term moderate or major adverse impact on harbor seals.

DFG	296	Paragraph 5	According to the Pacific Harbor Seal Monitoring at PRNS 2009 and 2010 Annual Reports and past reports, the high number of disturbances observed in Drakes Estero were caused by hikers on Limantour Beach. Shouldn't this be addressed in the cumulative impacts for the No-Action Alternative?
DFG	298	Paragraph 4	Calambokidis, et al. 1991 showed that kayakers cause harassment of harbor seals at a greater distance than do powerboats.
DFG	298	Paragraph 4	What research supports the assertion that sounds produced by DBOC would cause impacts to harbor seals?
DFG	389	Paragraph 3	This section should also compare shellfish production at DBOC at the regional level (within Marin County) which DFG and NPS has complete records for.
DFG	392	Last paragraph	DFG records between 2007-2009 show DBOC contributed 68% of total oysters and 63% of total shellfish within Marin County. Thus contributing far more to the local economy than presented in the DEIS.
DFG	394	Last paragraph	Where is the data that supports the claim that 70% of the oysters consumed in CA come from Humboldt? The reference used here is an advertisement and has not been fact checked for accuracy.
DFG	394	Last paragraph	The planning and permitting effort in Humboldt Bay will most likely not double the amount of area available to shellfish production.



State of California - The Resources Agency

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF FISH AND GAME
OFFICE OF THE GENERAL COUNSEL**

 1416 Ninth Street
 Sacramento, CA 95814
<http://www.dfg.ca.gov>
 (916) 654-3821


March 25, 2008

 The Honorable Jared Huffman
 Assemblymember, Sixth District
 Post Office Box 942849
 State Capitol Building
 Sacramento, California 94249-0006
Re: Drakes Bay Oyster Farm

Dear Assemblymember Huffman:

The purpose of this letter is to explain the position of the Department of Fish and Game (Department) regarding the ongoing issues between the Drakes Bay Oyster Farm and the Point Reyes National Seashore (PRNS). The Department Office of the General Counsel has provided the following discussion.

By way of review, in 1965 the Legislature granted to the United States certain tide and submerged lands in Drakes Estero for the PRNS. This grant contains a reservation of "the public right to fish" on the granted lands, consistent with article 1, section 25 of the California Constitution, and includes the area used by the oyster farm under two state water bottom leases. In November 1972, the prior owner of the oyster farm conveyed his property to the United States, subject to a reservation of occupancy and use in the grant deed.¹ By its terms, the reservation expected the state water bottom leases to continue until the 30-year term expired in 2012, after which the oyster farm would operate under a special use permit from PRNS that would run concurrently for remainder of the leases. Since the leases were subject to a maximum term of 25 years, the agreement anticipated that the leases could and would be renewed, and this in fact was done by the Fish and Game Commission (Commission) in 1979. The leases were renewed again in 2004, but made contingent upon compliance with the 1972 reservation and, after its expiration, with any PRNS special use permit. In 1976, the Point Reyes Wilderness Act designated over 25,000 acres as wilderness, and another 8003 acres as "potential wilderness." The oyster farm lies within this latter area.

In 2006, the PRNS questioned how "the public right to fish" reservation in the 1965 tidelands grant affected the status of the state water bottom leases.² In

¹The State of California was not a party to this transaction; it is unknown whether it was legally reviewed by the United States Department of the Interior, Office of the Solicitor.

²Much has been made of correspondence in 1965 and 1966 by then-Department Director W.T. Shannon, stating that the oyster farm is covered by "the right to fish" reservation. The two

Conserving California's Wildlife Since 1870

Assemblymember Huffman
 March 25, 2008
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May 2007, the Department concluded that since fishing was distinct from aquaculture, it was not subject to this tidelands grant reservation. Since both the 1972 grant reservation and the 2004 state water bottom lease renewal require compliance with all rules and regulations of the National Park Service, the Department concluded that "primary management authority" for the oyster farm lies with the PRNS. However, given the context of the original question, this conclusion properly refers only to primary management authority *over the state water bottoms that are the subject of the leases* and not to any other aspect of the aquaculture operation. The 1965 legislative grant did not create an area of exclusive federal jurisdiction, and the oyster farm continues to be subject to ongoing Department management, oversight, and enforcement.³

Three considerations are evident here. First, the Fish and Game Code expressly designates aquaculture as a form of agriculture⁴ and distinguishes it from commercial fishing.⁵ Such a distinction is apparent in statutes pre-dating the 1965 grant.⁶ Further, aquaculture involves the culture and harvesting of animals that are private property while fishing involves the permitted take of fish that are part of the public trust.⁷ A corollary to this second consideration is that "the right

letters are brief, general, and conclusory. However, while the link between the reservation and ongoing state authority is legally incorrect, the letters correctly assert concurrent jurisdiction over the oyster farm. This is consistent with the Department's May 2007 conclusion that the PRNS has "primary management authority" over the state water bottoms that are the subject of the leases, as well as the conclusions in this letter. See also footnote 3, below.

³This includes the payment of taxes and fees, facility registration, regulation of aquaculture products, facility inspections, stocking of aquatic organisms, brook stock acquisition, disease control, and importation of aquatic plants and animals.

⁴Fish and Game Code § 17. This 1962 provision codifies the long-standing concepts of common law (Hagenburger v. City of Los Angeles (1942) 51 Cal.App.2d 161 [a *farm* is a tract of land devoted to agricultural purposes]); ordinary dictionary meaning (*to farm* is "to grow or cultivate in quantity <shellfish>" (Webster's New Collegiate Dictionary 450 (9th ed. 1991)); a *farm* is "a tract of water reserved for the artificial cultivation of some aquatic food; *as an oyster farm*" [emphasis added] (Webster's Third New International Dictionary 824 (1961)); and usage of trade (California Aquaculture Association at: <http://www.californiaaquacultureassociation.org> [mission statement objective is to "assure the recognition of aquaculture as agriculture"]).

⁵Fish and Game Code § 15000(a). The commercial tax on oysters is also separate from the commercial fishing tax on mollusks. See Fish and Game Code §§ 8051, 15406.7.

⁶See e.g. Fish and Game Code of 1933 §§ 815, 820 [distinguishing cultivation of oyster beds from fishing].

⁷Fish and Game Code § 15001. See also Fish and Game Code §§ 45 [defining *fish*], 86 [defining *take*]; see also § 15 [defining *angling*]. These provisions derive from Fish and Game Code of 1933, § 2. This analysis is consistent with that in Pazoli v. Director of Division of Marine Fisheries (1994) 631 N.E.2d 547, 572-573 where the court stated that aquaculture is "a contemporary method of farming shellfish" and "is not fishing, nor can it legitimately be considered a 'natural derivative' of the public's right to fish."

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 March 25, 2008
 Page 3

to fish" over tidelands is a *public right* and cannot be exclusive.⁸ By contrast, a state water bottom lease confers on a person the *private right* to exclusively cultivate and harvest aquatic organisms in the leased area.⁹ While the Fish and Game Code guarantees the right of public access over the leased areas for reasonable public trust uses, including fishing,¹⁰ we do not believe aquaculturists would agree that "the right to fish" authorizes the public to take their cultivated products.¹¹ Finally, while "the right to fish" secures public access to state lands that are compatible with fishing, *it does not authorize fishing* on those lands¹² and confers on the public no right they did not already have.¹³ The provision is properly read in connection with (now) article 4, section 20 of the California Constitution, which allows the Legislature to delegate to the Commission such powers relating to the protection and propagation of fish and game as it sees fit.¹⁴ It is this provision, not "the public right to fish," which authorizes the leasing of state water bottoms for aquaculture. The irrelevancy of "the public right to fish" to the future of the oyster farm is underscored by two additional factual considerations. First, the existing state water bottom leases are contingent upon the 30-year reservation of use and occupancy which, after it expires, requires a special use permit. If the oyster farm does not receive a special use permit to operate beyond 2012, a material condition of the lease renewals will not have been met. *This situation would be the same even if the underlying tidelands had never been granted to the United States.* Second, it cannot be contested that the 1965 legislative grant and "the public right to fish" only applies to the tidelands, not the adjacent terrestrial areas upon which the oyster farm is physically dependent, and which are part of the potential wilderness designation.

In July 2007, the Department attended a meeting with United States Senator Diane Feinstein and representatives of the oyster farm, the NPS, and the Coastal Commission. The NPS agreed to work with the oyster farm for a special use permit to continue operations through 2012, and all participants recognized that the future of the oyster farm after 2012 depends on the outcome of the wilderness area designation. The Department stands ready to work with all stakeholders in providing the requisite biological and program expertise on any proposed action

⁸Pacific Steam Whaling Co. v. Alaska Packers' Association (1903) 138 Cal. 632, 636.

⁹Fish and Game Code §15402; see also Fish and Game Code of 1933 § 815.

¹⁰Fish and Game Code §15411.

¹¹In fact, the taking of such organisms without lawful entitlement constitutes theft. See Fish and Game Code § 15002; see also Fish and Game Code of 1933 § 821 [requiring consent or permission of owner/occupier of the land].

¹²In re Quinn (1973) 35 Cal.App.3d 473; State v. San Luis Obispo Sportsman's Association (1978) 22 Cal.3d 440.

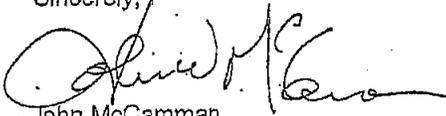
¹³Paladini v. Superior Court (1918) 178 Cal. 369, 372; California Gillnetters Association v. Department of Fish and Game (1995) 39 Cal.App.4th 1145, 1154.

¹⁴Ex parte Parra (1914) 24 Cal.App. 339.

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involving the oyster farm to help move this situation to a final resolution. However, for the reasons discussed above, the reservation of "the right to fish" in the 1965 tidelands grant is clearly inapplicable to this situation. We hope this responds to your concerns. Should you or any of your staff require any additional assistance, please contact Senior Staff Counsel Joseph Milton, Office of the General Counsel, at (916) 654-5336 [j.milton@dfg.ca.gov].

Sincerely,



John McCamman
Acting Director



State of California - The Resources Agency

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF FISH AND GAME
OFFICE OF THE GENERAL COUNSEL**

 1416 Ninth Street
 Sacramento, CA 95814
<http://www.dfg.ca.gov>
 (916) 654-3821


May 15, 2007

 Mr. Don Neubacher, Superintendent
 Point Reyes National Seashore
 Point Reyes Station, California 94956

Re: Drake's Bay Oyster Company

Dear Superintendent Neubacher:

The purpose of this letter is to memorialize the position of the Department of Fish and Game (Department) regarding the lease status of the above-referenced mariculture operation at Drakes Estero, within the Point Reyes National Seashore (PRNS). For the reasons discussed below, we conclude that the mariculture operation in question is properly within the primary management authority of the PRNS, not the Department.

By way of review, the leasing of state water bottoms at Drakes Estero dates to at least 1934. In 1965, the California Legislature granted to the United States, subject to certain limitations, "all of the right, title, and interest...to all of the tide and submerged lands or other lands beneath navigable waters" situated within the boundaries of the PRNS (Chapter 983, Statutes of 1965). The tidelands and submerged lands encompassed by this legislative grant include the leased state water bottoms. Consistent with article 1, section 25 of the California Constitution, this conveyance carried a reservation of the right to fish in the waters overlying these lands. Although the right to fish extends to both commercial and sport fishing, it does not extend to aquaculture operations. Regardless of whether its purpose is commercial or recreational, *fishing* involves the take of public trust resources and is therefore distinct from aquaculture, which is an agricultural activity involving the cultivation and harvest of private property (Fish and Game Code §§ 17, 15001, 15002, 15402). In November 1972, the Johnson Oyster Company (Johnson) conveyed its property to the United States, subject to a reservation of occupancy and use in the grant deed, which provided:

"Upon expiration of the reserved term, a special use permit may be issued for the continued occupancy of the property...provided, however, that such permit will run concurrently with and will terminate upon the expiration of State water bottom allotments assigned to the Vendor. Any permit for continued use will be issued in accordance with National Park Service regulations in effect at the time the reservation expires."

The reservation specifies a 40-year term and additionally requires, among other things, that Johnson comply with all applicable health and safety laws, and all rules and regulations of the National Park Service. This reservation expires in November 2012.

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DRAKES ESTERO MARICULTURE

After that time, aquaculture operations must continue subject to a special use permit that would run concurrently with, and would terminate upon, the expiration of the assigned State water bottom allotments. Since such allotments are subject to a maximum lease term of 25 years, both the grantor and grantee apparently contemplated that the state water bottom leases then in effect could be renewed, and this was in fact done in 1979. In June 2004, the Fish and Game Commission (Commission) renewed the state water bottom lease for an additional twenty-five years, contingent on this reservation, and also required Johnson to comply "with all rules and regulations now or hereinafter promulgated by any governmental agency having authority by law..." In March 2005, the Commission authorized the assignment of the state water bottom lease to Johnson's successor, Drakes Bay Oyster Company.

The 2004 lease renewal is expressly contingent upon the aquaculture facility's compliance with the 1972 grant reservation and, after its expiration, with any special use permit that PRNS may issue in its discretion. The reservation requires compliance with all applicable health and safety laws and, specifically, with all rules and regulations of the National Park Service. Conversely, the renewal imposes an additional requirement of compliance with all other applicable laws, which reasonably includes those of the National Park Service and of PRNS in particular. For these reasons, we believe the mariculture operation in Drakes Estero is properly within the primary management authority of the PRNS, not the Department.

Should you or any of your staff require any additional assistance, please contact Senior Staff Counsel Joseph Milton, Office of the General Counsel, at (916) 654-5336 or jmilton@dfg.ca.gov.

Sincerely,


L. RYAN BRODDRICK
for Director

cc: Mr. Ralph Mihan, Office of the Solicitor
U.S. Department of the Interior

Mr. Joseph Milton, Senior Staff Counsel
Department of Fish and Game



United States Department of the Interior

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

IN REPLY REFER TO:

L7617

JAN 09 2012

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

RE: Draft Environmental Impact Statement for the Drakes Bay Oyster Company Special Use Permit
106 Consultation

Dear Mr. Donaldson,

Pursuant to the National Environmental Policy Act (NEPA), the National Park Service (NPS) has prepared a Draft Environmental Impact Statement (EIS) for the Drakes Bay Oyster Company (DBOC) Special Use Permit (SUP). On April 1, 2011, the NPS sent a request to your office regarding the Notification of Intent to use the NEPA process to meet Section 106 Obligations at Point Reyes National Seashore. The Draft EIS was released for public comment September 23, 2011 and public comment closed on December 9, 2011. In addition, the NPS provided this document to the State Clearinghouse for concurrent review. The review period for SCH #2010104004 was September 29 – November 29, 2011.

Existing authorizations for DBOC to operate in Drakes Estero expire on November 30, 2012. The Draft EIS explores a range of alternatives, including a no-action alternative which includes expiration of existing authorizations and subsequent conversion of Drakes Estero to full wilderness. Under the three action alternatives, the Secretary of Interior would exercise discretion granted to him under Section 124 of Public Law 111-88, to issue a new 10-year SUP to DBOC for commercial oyster operations in Drakes Estero through November 30, 2022. The action alternatives consider differing levels of onshore facilities and infrastructure and offshore operations.

The Draft EIS does not present a preferred alternative. Full and objective input from the public is encouraged on all of the alternatives analyzed in the Draft EIS. All public comments received on the Draft EIS will be evaluated and considered in the development of the preferred alternative. The NPS is now in the process of compiling and reviewing all comments.

Pursuant to the National Historic Preservation Act, a Determination of Eligibility (DOE) was prepared for the Johnson's Oyster Company (aka Drakes Bay Oyster Company). The DOE found that although the property was significantly associated with the history of oyster production in California, the site lacked integrity and was therefore not eligible for listing on the National Register. In a letter dated August 4, 2011 your office concurred with this finding of ineligibility. As a result, consideration of historic structures and landscapes were not included as impact topics in the DEIS.

In addition, the known archaeological site CA-MRN-296 adjacent to the developed area has been identified and re-documented. This previously recorded site is a partially disturbed Coast Miwok shell midden known to contain human remains. NPS has included the site in its draft National Register nomination for the Point Reyes Indigenous Archaeological District. As a result of recent archaeological work the site boundary has been better defined, and new State site forms have been completed. The archaeological work was done in collaboration with Sonoma State University and the Federated Indians of Graton Rancheria. In all project alternatives the archaeological site would be excluded from the SUP. As a result of the exclusion and provisions that require archaeological monitoring for ground disturbing activities under all DEIS alternatives, archaeological resources were not included as an impact topic in the DEIS.

We would like to meet with you next month to discuss the next steps regarding Section 106 consultation under the National Historic Preservation Act, and how we can provide your office with information necessary to evaluate these alternatives in a manner that will allow for timely review of this project by your agency.

Please contact Gordon White, the Chief of Cultural Resources at (415) 464-5127 to coordinate a meeting. We appreciate your participation in this process.

Sincerely,



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

JAN 09 2012

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

RE: Draft Environmental Impact Statement for the Drakes Bay Oyster Company Special Use Permit

Dear Dr. Sarris,

Pursuant to the National Environmental Policy Act (NEPA), the National Park Service (NPS) has prepared a Draft Environmental Impact Statement (EIS) for the Drakes Bay Oyster Company (DBOC) Special Use Permit (SUP). On August 10, 2011, the NPS sent a request to your office regarding the Notification of Intent to use the NEPA process to meet Section 106 Obligations at Point Reyes National Seashore. On August 29, 2011, Nick Tipon provided a response, concurring with the request to use the Draft EIS to meet the Section 106 "government to government" consultation requirements with the Federated Indians of Graton Rancheria.

The Draft EIS explores a range of alternatives, including a no-action alternative which includes expiration of existing authorizations and subsequent conversion of Drakes Estero to full wilderness. Under the three action alternatives, the Secretary of Interior would exercise discretion granted to him under Section 124 of Public Law 111-88, to issue a new 10-year SUP to DBOC for commercial oyster operations in Drakes Estero through November 30, 2022. The action alternatives consider differing levels of onshore facilities and infrastructure and offshore operations. The Draft EIS was released for public comment September 23, 2011 and public comment closed on December 9, 2011.

The Draft EIS does not present a preferred alternative. Full and objective input from the public is encouraged on all of the alternatives analyzed in the Draft EIS. All public comments received on the Draft EIS will be evaluated and considered in the development of the preferred alternative. The NPS is now in the process of compiling and reviewing all comments.

As part of our planning process the NPS, in collaboration with Sonoma State University and the Federated Indians of Graton Rancheria identified and re-documented the known archaeological site CA-MRN-296 adjacent to the developed area. This previously recorded site is a partially disturbed Coast Miwok shell midden known to contain human remains. NPS has included the site in its draft National Register nomination for the Point Reyes Indigenous Archaeological District. As a result of recent archaeological work the site boundary has been better defined, and new State site forms have been completed. In all project alternatives the archaeological site is excluded from the SUP. In addition to the site exclusion from the SUP, the Draft EIS includes the requirement for archaeological monitoring of all ground disturbing activities as a requirement common to all DEIS alternatives. As a result, and consistent with our discussions with the Tribe prior to release of the DEIS, archaeological resources were not included as an impact topic in the DEIS.

Existing authorizations for DBOC to operate in Drakes Estero expire on November 30, 2012. We would like to meet with you next month to discuss the next steps regarding Section 106 consultation under the National Historic Preservation Act, and how we can provide your office with information necessary to evaluate these alternatives in a manner that will allow for timely review of this project.

Please contact Gordon White, the Chief of Cultural Resources at (415) 464-5127 to coordinate a meeting. We appreciate your participation in this process.

Sincerely,



Cicely A. Muldoon
Superintendent



Sacred Sites Protection Committee
6400 Redwood Drive, Suite 300
Rohnert Park, CA 94928
707- 566-2288

August 13, 2012

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

RE: Section 106 Consultation for the Drakes Bay Oyster Company Use Permit

Dear Cicely:

The Federated Indians of Graton Rancheria (FIGR), a federally recognized Tribe and sovereign government, has received the materials regarding Section 106 Consultation for the Drakes Bay Oyster Company Use Permit. Section 106 of the National Historic Preservation Act of 1966 (NHPA) require federal projects to meet the requirements of 36 CFR 800 for consultation with federally recognized Tribes. We appreciate your notice and continued consultation for this project.

FIGR provides comments regarding sacred lands and other cultural sites to protect and/or avoid our cultural resources that might be adversely impacted by the scope of work of a project. The Sacred Site Protection Committee (SSPC) is authorized by the Tribal Council to work with agencies to develop the specific plans and procedures to avoid any potential adverse impacts.

We have reviewed the materials you provided regarding this project. We concur with your finding that each of the four alternatives presented in the DEIS will have "no adverse effect" on cultural resources under the standards set forth in 36 CFR 800.8(c)(1).

Respectfully,


Nick Tipon
Sacred Sites Protection Committee



Preserving America's Heritage

October 18, 2012

Ms. Cicely A. Muldoon
 Superintendent
 Point Reyes National Seashore
 Point Reyes, California 94956

REF: *Proposed Drakes Bay Oyster Company Special Use Permit/ Environmental Impact Statement*

Dear Ms. Muldoon:

On July 30, 2012, the Advisory Council on Historic Preservation (ACHP) received your letter inviting us to review the Draft Environmental Impact Statement (EIS) for the Drakes Bay Oyster Company Special Use Permit, which was made available for a 60-day public review and comment period beginning on September 26, 2011. The NPS had previously notified the ACHP of its intent to use the NEPA process for Section 106 purposes in accordance with Section 800.8(c) of the Section 106 implementing regulations, "Protection of Historic Properties" (36 CFR Part 800). In accordance with Section 800.8(c)(2) of the regulations, a federal agency shall submit the Draft EIS to the consulting parties, including the ACHP, "prior to or when making the document available for public comment." Then the consulting parties, including the ACHP, have the opportunity to review the document and voice any objections within the public comment period, which for this Draft EIS closed on November 25, 2011. We have no record of having been provided this document when it was made available to the public, so it was not possible for us to review it or provide any objections within the public comment period.

Despite this procedural problem, we reviewed the documentation provided to us. The NPS has found that the proposed undertaking would not adversely affect historic properties. Provided that this finding has been made in consultation with the California State Historic Preservation Officer (SHPO), Indian tribes, and other consulting parties, and these parties have not objected to this finding, the ACHP need not be further involved in the Section 106 review of this undertaking. If the NPS has received objections from one or more of the consulting parties, we recommend that the NPS address them in accordance with Section 800.5(c) of the regulations. You may request the comments of the ACHP regarding a disputed no adverse effect finding, if needed.

If you would like to discuss the comments provided here for the consideration of the NPS, please contact Katry Harris at (202) 606-8520 or kharris@achp.gov.

Sincerely,

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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October 29, 2012

Reply in Reference To: NPS120112A

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

Re: Drake's Bay Oyster Co. Special Use Permit, Environmental Impact Statement, Point Reyes National Seashore

Dear Ms. Muldoon:

Thank you for your letter dated July 26, 2012, continuing consultation regarding the Special Use Permit for Drakes Bay Oyster Co. within the boundaries of Point Reyes National Seashore. Along with your letter, you submitted a draft document entitled "Revised Version of Issues and Impact Topics: Cultural Resources" (no date) and the Draft Environmental Impact Statement dated September 2011. In a letter dated January 9, 2012, you notified my office that the National Park Service (NPS) intends to "use the NEPA process to meet Section 106 obligations at Point Reyes National Seashore." In your current letter, you state that NPS is "using the process and documentation of the Environmental Impact Statement (EIS)...to comply with Section 106 of the National Historic Preservation Act", referencing 36 CFR 800.8(c)(1). NPS is conducting simultaneous consultation with the Federated Indians of Graton Rancheria, the park's single culturally affiliated tribe.

NPS is considering four alternatives regarding the special use permit. Under Alternative A, the no action alternative, NPS would not issue the permit and all buildings and structures for the existing oyster company would be removed, both onshore and in the estero. Alternative B would issue a new permit based upon onshore and offshore operations as they existed in 2010 for a period of 10 years. Alternative C would issue a new permit based upon onshore and offshore operations as they existed in 2008 for a period of 10 years. Alternative D would issue a new permit allowing for expanded onshore development and offshore operations for a period of 10 years.

NPS has identified the Area of Potential Effects (APE) as a 1,700-acre area covering the majority of Drakes Estero, the areas of the Drakes Bay Oyster Company's onshore and offshore Special Use Permit, their Reservation of Use and Occupancy, the kayak launch parking area, and the access road leading from Sir Francis Drake Boulevard. The APE occurs within the Shafter / Howard Tenant Ranches Historic District, but no district contributors are located within the APE. The APE intersects a portion of the proposed Pointe Reyes Peninsula Indigenous Archaeological District, and one contributing site, CA-MRN-296 is located within the APE. The recently-designated Drakes Bay Historic and Archaeological District is outside the permit area and would not be affected by any of the alternatives. The Drakes Bay Oyster Company's

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onshore and offshore facilities were evaluated by NPS and found to be significant but lacking historic integrity. My office concurred with this determination in a letter dated August 4, 2011.

NPS proposes a Finding of No Adverse Effects for all alternatives being considered in the undertaking of considering issuing a new Special Use Permit to Drakes Bay Oyster Company. No contributors to the Shafter / Howard Tenant Ranches Historic District exist within the APE. The oyster company's facilities are not historic properties. No known resources are located in the estero where the oyster racks are located. CA-MRN-296 will be excluded from the Special Use Permit area, and any ground disturbing activities in the vicinity of the site will be monitored by a qualified archaeologist to ensure the site is avoided.

After reviewing the information submitted, I concur with a Finding of No Adverse Effects for this undertaking. Please be advised that under certain circumstances, such as an unanticipated discovery or a change in project description, you may have future responsibilities for this undertaking under 36 CFR Part 800.

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,

Handwritten signature of Susan K. Stratton in cursive script.

Carol Roland-Nawi, Ph.D.
State Historic Preservation Officer

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E

SPECIES TABLES

Table E-1. Wintering Waterbird and Shorebird Species in Drakes Estero as Reported by White (1999)

Table E-2. Federally Listed Plant Species in Drakes Bay Quadrangle (Not Impacted by the Project)

Table E-3. Rare Plant Species (Excluded Due to Lack of Habitat in Project Area)

Table E-4. State-listed Plant Species (Not Impacted by the Project)

Table E-5. Species of Concern Listed in Point Reyes National Seashore (Not Impacted by the Project)

TABLE E-1. WINTERING WATERBIRD AND SHOREBIRD SPECIES IN DRAKES ESTERO AS REPORTED BY WHITE (1999)*

Species by Common Name	Median	11/10-11/98	12/8/98	1/5/99	1/21/99	2/3/99	3/3/99
Red-throated loon	2	0	1	2	1	7	5
Pacific loon	1	0	1	0	0	3	1
Common loon	32	26	30	38	50	24	33
Pied-billed grebe	28	42	57	51	12	14	8
Horned grebe	93	86	84	88	202	97	139
Eared grebe	149	6	63	173	133	256	164
Western grebe	22	11	25	18	27	4	50
Clark's grebe	0	0	0	0	1	2	0
Grebe spp. (western/Clark's)	0	0	0	0	0	0	10
American white pelican	0	0	0	21	0	2	0
Brown pelican	1	5	1	0	1	5	0
Double-crested cormorant	23	34	12	28	17	3	75
Pelagic cormorant	1	1	1	0	0	1	3
Great blue heron	4	4	2	4	6	6	1
Great egret	7	6	7	4	7	5	8
Snowy egret	13	21	11	14	10	4	20
Black brant	59	14	80	38	160	140	5
Canada goose	0	18	0	0	0	0	0
Green-winged teal	175	214	53	164	282	185	129
Mallard	27	112	73	9	14	10	39
Northern pintail	60	344	35	229	67	53	4
Cinnamon Teal	0	2	0	0	0	0	4
Northern Shoveler	7	18	10	3	33	0	0
Gadwall	207	80	343	269	168	174	240
Eurasian wigeon	1	0	1	0	1	0	1
American wigeon	549	425	604	977	982	494	186
Canvasback	30	4	130	12	38	22	136
Greater scaup	29	1	4	47	90	11	52
Lesser scaup	67	0	0	62	395	324	72
Scaup spp.	298	35	291	381	304	195	315
Oldsquaw	0	0	1	0	0	0	0
Surf scoter	131	90	138	85	186	123	217
White-winged scoter	0	0	0	0	1	0	4
Common goldeneye	23	0	21	53	72	25	11
Hooded merganser	4	4	4	4	2	6	1
Red-breasted merganser	41	4	12	45	42	40	48
Bufflehead	1070	328	1127	1541	1013	1222	691
Ruddy duck	2210	793	1272	2640	2765	2308	2112
American coot	99	28	102	95	92	111	119
Black-bellied plover	174	104	168	194	179	156	297
Snowy plover	16	0	6	41	20	41	12

Source: White 1999

* Bird inventory conducted by White (1999) for Drakes Estero includes all bays, Drake's Spit, Sunset Beach and Outer Drake's Bay. The highest count for each species is in bold.

TABLE E-1. WINTERING WATERBIRD AND SHOREBIRD SPECIES IN DRAKES ESTERO AS REPORTED BY WHITE (1999)* (CONTINUED)

Species by Common Name	Median	11/10-11/98	12/8/98	1/5/99	1/21/99	2/3/99	3/3/99
Semipalmated plover	3	17	2	2	42	0	4
Killdeer	23	4	0	33	58	69	13
Greater yellowlegs	20	23	22	18	18	14	34
Lesser yellowlegs	0	0	1	0	0	0	0
Willet	363	359	509	366	325	312	442
Long-billed curlew	19	11	17	15	23	20	20
Marbled godwit	566	311	655	543	589	858	349
Ruddy turnstone	1	0	1	0	0	1	1
Black turnstone	49	3	37	58	39	64	86
Red knot	0	1	0	0	0	0	0
Sanderling	24	22	21	25	95	120	0
Western sandpiper	873	806	321	1479	1592	852	893
Least sandpiper	597	505	186	702	855	689	171
Sandpiper spp. (Western/Least)	0	104	0	0	0	0	0
Dunlin	1467	2031	1072	2775	1396	1538	246
Sandpiper spp. (Dunlin/Western/Least)	0	0	0	0	26	0	0
Long-billed dowitcher	0	0	71	0	0	0	0
Dowitcher spp.	41	61	36	74	45	25	17
Common snipe	0	0	0	1	0	0	0
Ring-billed gull	24	23	17	39	31	25	11
Forster's tern	0	1	0	0	0	0	0
Northern harrier	0	0	0	1	0	0	1
Sharp-shinned hawk	0	0	0	0	1	0	0
Cooper's hawk	0	0	0	1	0	0	0
Red-tailed hawk	1	1	0	2	1	0	1
Turkey vulture	2	5	0	0	1	2	2
Osprey	3	0	1	3	2	5	4
Merlin	0	0	1	0	0	0	0
American kestrel	0	0	0	1	0	0	0
Peregrine falcon	2	0	2	2	0	4	1
Belted kingfisher	6	3	8	3	7	9	4
Bonaparte's gull	a	a	p	a	a	a	a
Mew gull	p	a	p	p	a	p	p
Herring gull	a	a	a	p	a	p	a
California gull	p	p	a	p	p	p	p
Western gull	p	p	p	p	p	p	p
Glaucous-winged gull	p	p	p	p	p	p	p

Source: White 1999

* Bird inventory conducted by White (1999) for Drakes Estero includes all bays, Drake's Spit, Sunset Beach and Outer Drake's Bay. The highest count for each species is in bold. Presence (p) or absence (a) of all other gull species is identified.

TABLE E-2. FEDERALLY LISTED PLANT SPECIES IN DRAKES BAY QUADRANGLE (NOT IMPACTED BY THE PROJECT)

Common Name	Scientific Name	Federal Status	State Status	CNPS Status
Beach Layia	<i>Layia carnosa</i>	endangered	endangered	1B
Sonoma Alopecurus	<i>Alopecurus aequalis</i> var. <i>sonomensis</i>	endangered	no current listing status	1B
Sonoma Spineflower	<i>Chorizanthe valida</i>	endangered	endangered	1B
Tidestrom's Lupine	<i>Lupinus tidestromii</i> var. <i>layneae</i>	endangered	endangered	1B

Source: USFWS 2010

TABLE E-3. RARE PLANT SPECIES (EXCLUDED DUE TO LACK OF HABITAT IN PROJECT AREA)

Common Name	Scientific Name	CNPS Listing*	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
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

Source: CNPS 2008

* Listing Nomenclature:

- 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 needing more information, a review list
- List 4 - Plants of limited distribution, a watch list
- Threat Rank 0.1 – Seriously threatened in California
- Threat Rank 0.2 – Fairly threatened in California
- Threat Rank 0.3 – Not very threatened in California

TABLE E-3. RARE PLANT SPECIES (EXCLUDED DUE TO LACK OF HABITAT IN PROJECT AREA) (CONTINUED)

Common Name	Scientific Name	CNPS Listing*	Habitat Type
Harlequin Lotus	<i>Lotus formosissimus</i>	List 4.2	coastal scrub, grassland, wetlands
Humboldt Bay Owl's-clover	<i>Castilleja ambigua</i> ssp. <i>Humboldtiensis</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>tristullis</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
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

Source: CNPS 2008

* Listing Nomenclature:

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 needing more information, a review list

List 4 - Plants of limited distribution, a watch list

Threat Rank 0.1 – Seriously threatened in California

Threat Rank 0.2 – Fairly threatened in California

Threat Rank 0.3 – Not very threatened in California

TABLE E-3. RARE PLANT SPECIES (EXCLUDED DUE TO LACK OF HABITAT IN PROJECT AREA) (CONTINUED)

Common Name	Scientific Name	CNPS Listing*	Habitat Type
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

Source: CNPS 2008

* Listing Nomenclature:

- 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 needing more information, a review list
- List 4 - Plants of limited distribution, a watch list
- Threat Rank 0.1 – Seriously threatened in California
- Threat Rank 0.2 – Fairly threatened in California
- Threat Rank 0.3 – Not very threatened in California

TABLE E-4. 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 Blenosperma	<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

Source: CNPS 2008

TABLE E-5. SPECIES OF CONCERN LISTED IN POINT REYES NATIONAL SEASHORE
(NOT IMPACTED BY THE PROJECT)

Common Name	Scientific Name
Allen's Hummingbird	<i>Selasphorus sasin</i>
American Bittern	<i>Botaurus lentiginosus</i>
Ashy Storm-petrel	<i>Oceanodroma homochroa</i>
Bewick's Wren	<i>Thryomanes bewickii</i>
Black-crowned Night Heron	<i>Nycticorax nycticorax</i>
Black Rail	<i>Laterallus jamaicensis coturniculus</i>
Bumblebee Scarab Beetle	<i>Lichnanthe ursina</i>
Common Loon	<i>Gavia immer</i>
Ferruginous Hawk	<i>Buteo regalis</i>
Fringed Myotis Bat	<i>Myotis thysanodes</i>
Globose Dune Beetle	<i>Coelus globosus</i>
Grasshopper Sparrow	<i>Ammodramus savannarum</i>
Harlequin Duck	<i>Histrionicus histrionicus</i>
Loggerhead Shrike	<i>Lanius ludovicianus</i>
Long-billed Curlew	<i>Numenius americanus</i>
Long-eared Myotis Bat	<i>Myotis evotis</i>
Long-legged Myotis Bat	<i>Myotis volans</i>
Marin Elfin Butterfly	<i>Incisalia mossii</i>
Nicklin's Peninsula Coast Range snail	<i>Helminthoglypta nickliniana awania</i>
Northwestern Pond Turtle	<i>Clemmys marmorata marmorata</i>
Olive-sided Flycatcher	<i>Contopus cooperi</i>
Opler's Longhorn Moth	<i>Adela oplerella</i>
Pacific Lamprey	<i>Lampetra tridentate</i>
Pacific Slope Flycatcher	<i>Empidonax difficilis</i>
Pacific Western Big-eared Bat	<i>Corynorhinus (Plecotus) townsendii townsendii</i>
Point Reyes Blue Butterfly	<i>Icaricia icaridides ssp</i>
Point Reyes Jumping Mouse	<i>Zapus trinotatus orarius</i>
Point Reyes Mountain Beaver	<i>Aplodontia rufa phaea</i>
Saltmarsh Yellowthroat	<i>Geothlypis trichas sinuosa</i>
Sandy Beach Tiger Beetle	<i>Cicindela hirticollis gravida</i>
Short-eared Owl	<i>Asio flammeus</i>
Sonoma Arctic Skipper	<i>Carterocephalus paleemon ssp</i>
Tomales Roach	<i>Lavinia symmetricus spp.</i>
Tricolored Blackbird	<i>Agelaius tricolor</i>
Vaux's Swift	<i>Chaetura vauxi</i>
White-tailed (=Black Shouldered) Kite	<i>Elanus leucurus</i>
William's Bronze Shoulderband Snail	<i>Helminthoglypta arrosa williamsi</i>
Yuma Myotis Bat	<i>Myotis yumanensis</i>

Source: NPS 2007a

F

**COMMENTS AND RESPONSES ON THE DRAFT PLAN/
ENVIRONMENTAL IMPACT STATEMENT**



Final Environmental Impact Statement

Drakes Bay Oyster Company

Special Use Permit

*Comments and Responses on the Draft Environmental
Impact Statement*

Point Reyes National Seashore

November 2012

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INTRODUCTION

Pursuant to the National Environmental Policy Act (NEPA), its implementing regulations, and National Park Service (NPS) guidance on meeting NEPA obligations, the NPS has reviewed and considered comments submitted on the *Draft Environmental Impact Statement for Drakes Bay Oyster Company Special Use Permit* (Draft EIS). This report describes how the NPS considered public and agency comments and provides responses to the substantive comments received (see “Method of Comment Analysis” section for a definition of substantive comments).

The public comment period was announced by publication of the NPS notice of availability of the Draft EIS in the September 26, 2011 Federal Register; through the Seashore’s website (www.nps.gov/pore); through a newsletter sent to interested parties, elected officials, and appropriate local and state agencies; and through press releases. Following the announcement of the document’s availability and the distribution of the Draft EIS to agencies and the public, the comment period was open between September 26, 2011 and November 29, 2011. The public comment period was extended to December 9, 2011, in anticipation of the November 22, 2011 release of the final Marine Mammal Commission report on the impact of shellfish operations on harbor seals in Drakes Estero. The extension of the comment period was published by the U.S. Environmental Protection Agency in the Federal Register on November 25, 2011 and was announced in a press release on November 17, 2011.

A copy of the Draft EIS was posted on the NPS Planning, Environment, and Public Comment (PEPC) website at www.parkplanning.nps.gov/PORE. A news release announced the electronic availability of the Draft EIS on PEPC. The Draft EIS was also available in local public libraries, at the public meetings, and by contacting the Seashore Superintendent to request a printed copy or CD. The public was encouraged to submit comments on the Draft EIS through the NPS PEPC website, by mail delivery, or hand delivery to the Superintendent at the Seashore’s headquarters in Point Reyes Station, California. Oral statements and written comments were also accepted during the three open house public meetings, discussed below. Each submission received (a letter, oral statement, or comment directly entered into PEPC) is referred to as a correspondence. As explained in the Federal Register notice of availability for the Draft EIS, comments were not accepted by fax, email, or in any other way than those specified above. Also, as indicated in the Federal Register notice of availability, bulk comments in any format (hard copy or electronic) submitted on behalf of others were not accepted. Bulk comments received during the public comment period are not posted online nor reflected in this report. The term “comment” here is used to broadly refer to any type of correspondence containing comments on the Draft EIS, as more formally defined below.

There were multiple sets of comments not submitted correctly and not accepted in this process. Among those are:

- More than 4,000 from the Center of Biological Diversity
- More than 2,000 from Turtle Island Restoration Network
- Approximately 40 from an unaffiliated individual
- Approximately 40 from Alliance for Sustainable Agriculture
- More than 7,000 from Drakes Bay Oyster Company (DBOC)

Each group that submitted comments not accepted in this EIS process was notified, verbally in most cases, that their comments would not be accepted and provided with information on how to comment in

one of the acceptable ways, if time allowed. Those groups or individuals who submitted comments incorrectly at or after the close of the comment period may not have been notified.

PUBLIC OPEN HOUSES

In October 2011, three public open house meetings were held to continue the public involvement process and facilitate community feedback on the Draft EIS, in addition to the opportunities provided to submit written comments, as described above. The open houses were announced through news releases, on the PEPC website, and on the Seashore's website. Meeting times and locations for the three public meetings were as follows:

- Tuesday, October 18, 6:00-8:00 pm – Dance Palace Community Center, 503 B Street, Point Reyes Station, CA 94956
- Wednesday, October 19, 6:00-8:00 pm – Fort Mason Center, Building D, San Francisco, CA 94123
- Thursday, October 20, 6:00-8:00 pm – Tamalpais High School Student Center, 700 Miller Avenue, Mill Valley, CA 94941

A total of 247 attendees signed in during the three open house meetings. Some individuals attended more than one open house and are counted more than once in this total. Attendees were able to provide oral statements to planning team members stationed at flip charts located throughout the room. A Spanish language interpreter was available at each of the open house meetings. Planning team members wrote each comment on flip charts, which were posted on the wall for attendees to see and were entered into PEPC after the open houses were finished. All flipcharts from each night were added as a single correspondence to PEPC. Written public comments were also accepted at the open house meetings and entered into PEPC. NPS provided attendees with a fact sheet (available in both English and Spanish), which provided additional background on the project, the current status of the project, the EIS schedule, and information on how to participate in the EIS process, including how to get a copy of the Draft EIS and how to submit comments.

DEFINITION OF TERMS

Primary terms used in the document are defined below.

Substantive Comments: During coding, comments were classified as substantive or non-substantive. A substantive comment is defined in the NPS Director's Order #12 (DO-12; NPS 2001b) Handbook as a comment that does one or more of the following (DO-12 Handbook, section 4.6A):

- Question, with a reasonable basis, the accuracy of information presented in the EIS;
- Question, with a reasonable basis, the adequacy of the environmental analysis;
- Present reasonable alternatives other than those presented in the EIS; and/or
- Cause changes or revisions in the proposal.

As further stated in the DO-12 Handbook, substantive comments “raise, debate, or question a point of fact or policy” (NPS 2001b).

Non-substantive: Comments in favor of or against the proposed action or alternatives, or comments that only agree or disagree with NPS policy, are not considered substantive. The NPS read and considered all substantive and non-substantive comments in the process of preparing the Final EIS; however, non-substantive comments do not require a response.

Correspondence: A correspondence is the entire document received from a commenter. This includes letters, written comment forms, comments entered directly into PEPC, flip charts from the open houses, and any other written comments provided either at the public open houses, by postal mail, or in person at the park.

Comment: A comment is a portion of the text within a correspondence that addresses a single subject. It could include such information as an expression of support for or opposition to an alternative, additional data regarding the existing condition, or questions related to the impact analysis.

Code: A grouping centered on a common subject. The codes were developed based on the structure of the EIS and were used to track major subjects.

Concern: Concerns are statements that summarize the issues identified by each code. Each code was further characterized by concern statements to provide a better focus on the content of comments. Some codes required multiple concern statements, while others did not. In cases where no comments were received on an issue, the issue was not identified or discussed in this report.

Response: Responses are statements that summarize how the EIS has been revised to address the concern. In some cases, the requested information may already be present within the document, and the response will direct the reader the appropriate location.

METHOD OF COMMENT ANALYSIS

The NPS read and considered all substantive and non-substantive comments in the process of preparing the Final EIS. During the comment period, a total of 52,473 pieces of correspondence were received by one of the following methods: hard copy letter via mail or in-person delivery to the Seashore, oral or written statement provided at a public meeting, or entered directly into the NPS PEPC website. As stated in the Draft EIS Notice of Availability posted in the Federal Register, bulk comments (e.g., correspondence letters) submitted on behalf of others were not accepted. Bulk comments received during the public comment period are not posted online nor reflected in this report. All correspondence delivered by any of the approved methods were entered into the PEPC system for analysis. Each correspondence was read, and specific comments within each correspondence were identified. All comments were categorized by applying a series of codes that identify the general content of a comment and help to group similar comments together. A total of 98 codes were used to categorize all of the public comments received. An example of a code developed for this project is AL5000 – Alternative A. In some cases, the same comment may be categorized under more than one code, reflecting the fact that the comment may contain more than one issue or idea.

Once all the correspondence was entered into PEPC, each was read, and specific comments within each correspondence were identified. When identifying comments, every attempt was made to capture the full breadth of comments submitted.

There is no restriction on the number of times a person may comment on a NEPA process, and as previously noted, there were multiple people who commented multiple times, on all sides of this issue. Form letters were submitted on all sides of this issue. NPS's focus in this process is analyzing the comments received for content that informs the EIS. Comments that repeat the same message are responded to collectively in the Final EIS.

The correspondence received included several form letters. A total of 24 distinct form letters were received. The number of copies of each ranged from only a few to 15,870. Overall, 50,040 of the 52,473 pieces of correspondence received during the Draft EIS comment period were form letters. It should be noted that some pieces of correspondence included form letter text as well as additional language/comments that required further review and consideration. These letters were counted as unique correspondence, even though the letters included the form letter text. Each copy of a form letter is considered one piece of correspondence.

HOW WERE MY COMMENTS USED?

As described above, all substantive comments were categorized into concern statements, such as "Commenters requested additional detail regarding the impacts on socioeconomic resources under alternative A," and "Commenters expressed concern that issuance of a new Special Use Permit (SUP) could set a precedent."

A response was prepared for each concern statement. If changes to the Draft EIS were warranted to address a concern, the response provides a brief summary of how the Final EIS was changed to address that concern. If the information requested or suggested was already included in the Draft EIS, the response guides readers to the appropriate location(s) within the Final EIS. These concerns and the corresponding responses are listed in the Concern Response Report section of this report.

NEPA does not require identification to be provided or proven as a condition of providing public comments. All public comments received by the NPS in one of the acceptable methods described in the Notice of Availability were considered and treated equally. Public comment was only one of many factors considered by the decision maker when identifying the preferred alternative.

HOW DO I FIND MY CORRESPONDENCE?

All correspondence received during the public comment period are posted on the Drakes Bay Oyster Company Special User Permit Draft Environmental Impact Statement: Public Comments webpage (http://www.nps.gov/pore/parkmgmt/planning_dboc_sup_deis_public_comments.htm). If you would like to find your individual correspondence, follow the steps below:

1. Use the *Correspondence ID by Author Report* (http://www.nps.gov/pore/parkmgmt/planning_dboc_sup_deis_public_comments.htm) to look up the Correspondence ID for a particular author or organization. This report is organized by the alphabetically by organization or by author's last name.
2. Use the Correspondence ID to find the full correspondence in the list provided on the Public Comments website.

GUIDE TO THIS REPORT

This report is organized into the sections described below. The *Content Analysis Report* and the *Concern Response Report* are provided in the following sections of this document. For more information on how to find a particular correspondence, see the "How Do I Find My Correspondence?" instructions above.

Content Analysis Report: This is the basic report produced from PEPC that provides information on the numbers and types of comments received, organized by code and by various demographics. Tables F-1 and F-2 summarize the number of correspondence by geographic origin (both state and country). Table F-3 displays the number of correspondence by organization type (i.e., organizations, governments, individuals, etc.). Table F-4 lists correspondence distribution by substantive code. Table F-5 lists correspondence distribution by non-substantive code. Table F-6 displays the number of correspondence by correspondence type (i.e., amount of comments through PEPC, letters, etc.), respectively.

Concern Response Report: This report summarizes the comments received during the public comment period. In the report, comments are organized by codes and further organized into concern statements. A list of concern statements, in table format, is provided at the beginning of the *Concern Response Report* section for quick reference.

Correspondence ID by Author Report: This report cross-references the unique tracking number assigned to each piece of correspondence and the corresponding commenter name. The report is available on the park's website at:
http://www.nps.gov/pore/parkmgmt/planning_dboc_sup_deis_public_comments.htm.

CONTENT ANALYSIS REPORT

Table F-1. Correspondence Distribution by State

State	Percentage	Number of Correspondence
California	37.1 %	19,442
New York	6.6 %	3,483
Florida	4.6 %	2,392
Illinois	3.4 %	1,809
Texas	3.2 %	1,683
Washington	3.2 %	1,662
Colorado	2.7 %	1,424
New Jersey	2.5 %	1,329
Massachusetts	2.4 %	1,277
Oregon	2.4 %	1,257
Michigan	2.0 %	1,074
Ohio	2.0 %	1,065
Arizona	1.9 %	1,020
Pennsylvania	1.9 %	1,014
Virginia	1.8 %	942
North Carolina	1.7 %	912
Maryland	1.5 %	812
Wisconsin	1.4 %	730
Minnesota	1.4 %	716
Georgia	1.3 %	659
Connecticut	1.2 %	612
Missouri	1.1 %	551
New Mexico	1.0 %	549
Indiana	1.0 %	540
Tennessee	0.9 %	491
Nevada	0.6 %	333
Maine	0.5 %	288
Kentucky	0.5 %	261
Utah	0.5 %	260
New Hampshire	0.5 %	259
South Carolina	0.5 %	248
Iowa	0.5 %	247
Hawaii	0.5 %	247
Kansas	0.4 %	232

Table F-1. Correspondence Distribution by State (Continued)

State	Percentage	Number of Correspondence
Louisiana	0.4 %	211
Montana	0.4%	207
Alabama	0.4 %	184
Arkansas	0.3 %	183
Vermont	0.3 %	171
Oklahoma	0.3 %	168
Idaho	0.3 %	161
Alaska	0.3 %	152
Delaware	0.3 %	142
Nebraska	0.3 %	140
D.C.	0.3 %	139
Rhode Island	0.3 %	138
West Virginia	0.2 %	124
Unspecified	0.2 %	99
Mississippi	0.2 %	86
Wyoming	0.1 %	75
South Dakota	0.1 %	68
Virgin Islands	0.1 %	49
North Dakota	0.1 %	46
Puerto Rico	0.1 %	39
American Samoa	0.0 %	22
Northern Mariana Islands	0.0 %	13
Guam	0.0 %	12
Total	—	52,473

Table F-2. Correspondence Distribution by Country

Country	Percentage	Number of Correspondence
Australia	0.0 %	4
Malaysia	0.0 %	1
Spain	0.0 %	2
Austria	0.0 %	1
France	0.0 %	1
Chad	0.0 %	1
Brazil	0.0 %	3
Algeria	0.0 %	1
Great Britain	0.0 %	8
Chile	0.0 %	1
Kenya	0.0 %	1
Angola	0.0 %	1

Table F-2. Correspondence Distribution by Country (Continued)

Country	Percentage	Number of Correspondence
Sweden	0.0 %	1
USA	99.9 %	52,396
Italy	0.0 %	7
Tajikistan	0.0 %	1
Norway	0.0 %	1
Aruba	0.0 %	1
Netherlands	0.0 %	1
Germany	0.0 %	7
Burkina Faso	0.0 %	1
Indonesia	0.0 %	1
Slovenia	0.0 %	2
Belarus	0.0 %	1
Mongolia	0.0 %	1
Kiribati	0.0 %	1
Myanmar	0.0 %	1
Guinea	0.0 %	1
Denmark	0.0 %	1
Finland	0.0 %	1
Canada	0.0 %	12
Equatorial Guinea	0.0 %	1
New Zealand	0.0 %	1
Cape Verde	0.0 %	1
Hungary	0.0 %	1
Switzerland	0.0 %	1
Panama	0.0 %	1
Samoa	0.0 %	1
Niger	0.0 %	1
Unspecified	0.0 %	1
Albania	0.0 %	1
Total	—	52,473

Table F-3. Correspondence Count by Organization Type

Organization Type	Correspondences
Government	10
Business	20
Non-Profit/Organization	46
University/Professional Society	2
Unaffiliated Individual	52,395
Total	52,473

Table F-4. Correspondence Distribution by Substantive Code (Requires Response)

Code	Description	Correspondences
PN4000	Purpose, Need, Objectives	10
PN4100	Purpose and Need Issue: Precedence	243
PN5000	Authority Over Drakes Estero and Adjacent Lands	26
PN5100	State Management of Aquaculture Operations	1
PN5500	Purpose of Point Reyes National Seashore	43
PN5550	Purpose of Point Reyes National Seashore: Ranches	13
PN5600	Relationship to Other Laws, Policies, and Plans	12
PN5610	Relationship to Other Plans: GMP	117
PN5620	Relationship to Other Plans: Johnson Oyster Co EA (1998)	3
PN5630	Relationship to Other Policies: Aquaculture Law & Policy	99
PN5800	Establishment of Wilderness at Point Reyes National Seashore	50
PN5900	Commercial Shellfish Operations in Drakes Estero	10
PN6000	NEPA Process	13
PN7050	Impact Topic Dismissed: Vegetation	3
PN7100	Impact Topic Dismissed: Carbon Footprint	90
PN7150	Impact Topic Dismissed: Geologic Resources	1
PN7200	Impact Topic Dismissed: Cultural Resources	133
PN7300	Impact Topic Dismissed: Environmental Justice	12
PN7400	Impact Topic Dismissed: Local Food	187
PN9000	Ch 1: Editorial Changes	3
AL4000	Alternatives: Existing Conditions	5
AL5000	Alternative A	108
AL6000	Alternatives: Elements Common to All Action Alternatives	28
AL6100	Alternative B	2

Table F-4. Correspondence Distribution by Substantive Code (Requires Response) (Continued)

Code	Description	Correspondences
AL6300	Alternative D	3
AL7100	Alternatives: Dismissed - Open Shellfish Operations to Competitive Bid	3
AL7200	Alternatives: Dismissed - Relocate DBOC	6
AL7300	Alternatives: Dismissed - Alter SUP Term	45
AL7400	Alternatives: Dismissed - Issue a Renewable SUP	1,432
AL7600	Alternatives: Dismissed - Incorporate Phase Out Requirements in New SUP	2
AL7700	Alternatives: Dismissed - Comprehensive Restoration of the Developed Onshore Area	2
AL8000	Alternatives: New Elements or Alternatives	17
AL8190	New Alternative: Collaborative Management	1,750
AL6000	Alternatives: Elements Common to All Action Alternatives	28
AL10000	Alternatives: Preferred Alternative	4
AL11000	Alternatives: Environmentally Preferable Alternative	27
AL12000	Alternatives: General Comments	7
AL12200	Alternatives: Mitigation	10
AE1000	Affected Environment: General Comments	1
AE2000	Affected Environment: Drakes Estero Setting and Processes	2
IA1000	Impact Analysis: General Comments	290
IA1100	Impact Analysis: Shell Donation	61
IA2000	Impact Analysis: General Methodology for Assessing Impacts	9
IA2200	Impact Methodology: Baseline for Analysis	6
IA2500	Impact Analysis: References Used for Assessing Impacts	43
IA3200	Impact Analysis: Climate Change	7
IA3300	Impact Analysis: Water Quantity	1
IA3400	Impact Analysis: Invasive Species	1
IA4000	Impact Analysis: Cumulative Impacts	4
IA4200	Cumulative Impacts: Kayaking	16
IA4250	Cumulative Impacts: Monitoring/Management of Invasive Species	7
IA4300	Cumulative Impacts: Ranching	28
IA4350	Cumulative Impacts: Human-caused Noise Sources	3
IA4500	Cumulative Impacts: Ocean Acidification	1
IA4600	Cumulative Impacts: Marine Life Protection Act Initiative	1
IM1000	Impairment	2
BE1000	Wildlife and Wildlife Habitat - Benthic Fauna: Affected Environment	8
BE2000	Wildlife and Wildlife Habitat - Benthic Fauna: Impact of Alternatives	25
BI1000	Wildlife and Wildlife Habitat - Birds: Affected Environment	3
BI2000	Wildlife and Wildlife Habitat - Birds: Impact of Alternatives	18
EE1000	Eelgrass: Affected Environment	4
EE2000	Eelgrass: Impact of Alternatives	36

Table F-4. Correspondence Distribution by Substantive Code (Requires Response) (Continued)

Code	Description	Correspondences
FI1000	Wildlife and Wildlife Habitat - Fish: Affected Environment	3
FI2000	Wildlife and Wildlife Habitat - Fish: Impact of Alternatives	8
FZ1000	Coastal Flood Zones: Affected Environment	1
FZ2000	Coastal Flood Zones: Impact of Alternatives	1
HS1000	Wildlife and Wildlife Habitat - Harbor Seals: Affected Environment	7
HS2000	Wildlife and Wildlife Habitat - Harbor Seals: Impact of Alternatives	128
HS2100	Harbor Seals: Use of Photographs	19
HS2200	Harbor Seals: Use of Becker 2011	9
OP1000	NPS Operations: Affected Environment	3
OP2000	NPS Operations: Impact of Alternatives	9
SE1000	Socioeconomic Resources: Affected Environment	11
SE2000	Socioeconomic Resources: Impact of Alternatives	188
SP1000	Special-Status Species: Affected Environment	42
SP2000	Special-Status Species: Impact of Alternatives	117
SS2000	Soundscapes: Impact of Alternatives	7
VE1000	Visitor Experience and Recreation: Affected Environment	22
VE2000	Visitor Experience and Recreation: Impact of Alternatives	59
WE1000	Wetlands and Waters of the U.S.: Affected Environment	3
WE2000	Wetlands and Waters of the U.S.: Impact of Alternatives	9
WI1000	Wilderness: Affected Environment	2
WI2000	Wilderness: Impact of Alternatives	31
WQ1000	Water Quality: Affected Environment	5
WQ2000	Water Quality: Impact of Alternatives	92
CC1000	Consultation and Coordination: Cooperating Agencies	1
CC3000	Consultation and Coordination: Public Outreach and Involvement	4
RF1000	Suggested References	93

Note: Each correspondence may have multiple codes. As a result, the total number of correspondence may be different than the actual comment totals

**Table F-5. Correspondence Distribution by Non-Substantive Code
(Does Not Require a Response)**

Code	Description	Correspondences
AL12090	Alternatives: General Comments	38
AL5900	Alternative A: Do Not Issue SUP (Support)	48485
AL6090	Alternatives: Issue New SUP (Generic Support)	587
AL6091	Alternatives: Issue New SUP (Support Alternatives B and D)	4
AL6190	Alternatives: Issue New SUP (Support Alternative B)	6
AL6290	Alternatives: Issue New SUP (Support Alternative C)	4
AL6390	Alternatives: Issue New SUP (Support Alternative D)	31
CC3100	Consultation and Coordination: Public Meetings	25
DU1000	Duplicate Correspondence/Duplicate Comment	300
GC1000	General Concerns	340
IA1090	Impact Analysis: General Comments	113
OS1000	Outside Scope	51
PN9000	Ch 1: Editorial Changes	4
DU	Duplicate Correspondence/Duplicate Comment	90

Note: Each correspondence may have multiple codes. As a result, the total number of correspondence may be different than the actual comment totals

Table F-6. Correspondence Distribution by Correspondence Type

Type	Correspondences
Web Form	51,526
Letter	879
Park Form	65
Other (Flip charts from public meetings)	3
Total	52,473

CONCERN RESPONSE REPORT

As described above, this report summarizes the comments received during the public comment period for the Drakes Bay Oyster Company Draft EIS, provides a concise list of concern statements by code, and provides the responses to each of those concern statements.

PN4000 - Purpose, Need, Objectives

Concern Statement 35894	Commenters requested that the purpose of and need for this action include DBOC's goals and objectives.
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NPS Response to Concern Statement 35894:

As noted in the EIS, the need for action relates to section 124, which provides the Secretary with authority “notwithstanding any other provision of law.” While the Department of the Interior has decided to prepare an EIS and generally use the procedures of NEPA to help inform the decision, it is doing so as a matter of discretion under section 124.

The DOI’s NEPA regulations, found at 43 Code of Federal Regulations (CFR) Part 46, address the formulation of purpose and need statements in NEPA documents that are prepared in response to permit applications. The Department of the Interior (DOI) NEPA regulations state that,

“When a bureau is asked to approve an application or permit, the bureau should consider the needs and goals of the parties involved in the application or permit as well as the public interest. The needs and goals of the parties involved in the application or permit may be described as background information. However, this description must not be confused with the bureau’s purpose and need for action. It is the bureau’s purpose and need for action that will determine the range of alternatives and provide a basis for the selection of an alternative in a decision” (43 CFR 46.420).

Text has been added to the chapter 1 (page 6) of the Final EIS describing DBOC’s goals, such as DBOC’s wishes to obtain a new SUP with the same terms and conditions as in the reservation of use and occupancy (RUO) and existing SUP, that DBOC would like permission to complete improvements considered in the 1998 Environmental Assessment (EA), and that DBOC would like to construct additional physical improvements. These objectives have not been added to the NPS purpose and need statement because doing so would limit the range of reasonable alternatives to only those that further DBOC’s goals, which would come at the expense of the broader public interest, and would be inconsistent with the Secretary’s discretion under section 124. The purpose and need statement in the Final EIS and the project objectives properly focus on the broader public interest. It should also be noted that the purpose and need statement as drafted has allowed NPS to consider an alternative (alternative D) that includes the new development requested by DBOC.

<p>Concern Statement 35895</p>	<p>Commenters requested that the project objectives be revised to include the following items:</p> <ul style="list-style-type: none"> -emphasis on preservation of natural resources -management consistent with the General Management Plan (GMP) -management consistent with the Seashore's enabling legislation -preservation of the Seashore's natural and cultural resources for future generations -manage the Seashore's pastoral zone consistent with the goals of the policies supporting increasing the supply of seafood -retain and expand interpretive services provided by DBOC -retain and improve affordable housing
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NPS Response to Concern Statement 35895:

Project objectives build from the project purpose and identify those goals that are “critical to meet if NPS is to consider the proposal successful” (NPS 2001b). Project objectives should be grounded in the park’s enabling legislation, purpose, significance, and mission goals; as well as relevant legislation, plans (such as GMPs) or other NPS standards and guidelines. The project objectives, as currently written, provide the basic goals that the project must address, as related to the park purpose for the Drakes Estero area: manage natural and cultural resources to support their protection, relocation, and prevention; manage, wilderness and potential wilderness to preserve the character and qualities for which they were designated, and provide opportunities for visitor use and enjoyment of park resources. Project objectives should be broad enough to allow for a reasonable range of alternatives without narrowing the focus or intentionally excluding an alternative.

Two of the proposed suggestions (emphasis on natural resources, preservation of the Seashore’s natural and cultural resources for future generations) were included as a project objective in the Final EIS (see “Project Objectives” on page 5). Management consistent with the GMP and the Seashore’s enabling legislation is assumed because the Seashore must adhere to NPS guidance. However, the Secretary’s decision, as allowed by section 124, may be contrary to the park’s enabling legislation and approved GMP. A description of the Purpose and Significance of Point Reyes National Seashore is provided on pages 14-16 of the EIS, and the relationship to the GMP is provided on pages 65-66.

The suggested objectives related to increasing the supply of seafood, retaining and expanding interpretive services provided by DBOC, and retaining and improving affordable housing are not applicable to this project because they are not grounded in the park’s enabling legislation, purpose, significance, or mission goals for the Drakes Estero area. More specifically, the mission of the NPS is to preserve unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations.

<p>Concern Statement 36942</p>	<p>A commenter stated that the project need is based solely on Paragraph 11 of the RUO; DBOC's only need is for a SUP from the NPS to run concurrently with their existing California Department of Fish and Game (CDFG) lease (which does not expire until 2029).</p>
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NPS Response to Concern Statement 36942:

Paragraph 11 of the RUO is discretionary and for the reasons specified below does not provide a basis for issuing a SUP to DBOC. Further, Paragraph 11 of the RUO states that any SUP issued following expiration of the reserved term, “will be issued in accordance with National Park Service regulations in effect at the time the reservation expires.”

Had Congress not enacted section 124, the NPS would not have been able to issue a SUP to DBOC after November 30, 2012. NPS regulations generally prohibit business operations in units of the National Park System, except where authorized by a “permit, contract, or other written agreement with the United States.” 36 CFR 5.3. Once the RUO expired, DBOC would not have had a contract or other written agreement, and in any event Paragraph 11 of the expiring RUO only provides for the possibility of a SUP. NPS issuance of SUP is normally governed by Director’s Order 53, Special Park Uses (DO 53; NPS 2010i), and its’ accompanying Reference Manual.

Under DO 53, the NPS may only issue SUPs for temporary occupancy for up to two years after a RUO expires (See DO 53 Reference Manual, Appendix. 14.). Such permits may only be issued under certain limited circumstances, such as historic significance, extreme environmental conditions, or undue hardship in the case of a primary residence. DBOC’s desire to conduct an ongoing commercial operation cannot be accommodated under any of these limited exceptions. This means it can only be accommodated under specific overriding legislative authority, which means that the terms of any such permit will depend on section 124, not the RUO.

Moreover, the geographic extent of a SUP issued under the RUO would be limited to the area encompassed by the RUO. The onshore RUO area excludes DBOC’s setting tanks, the work platform near the dock, storage sheds, the office trailer and one of the mobile residence structures. (see figure 2.3.) DBOC’s only access to these structures is by virtue of the 2008 SUP. A permit limited to the RUO boundary would not include areas necessary to DBOC’s operation.

For these reasons, the issuance of a SUP to DBOC is controlled by section 124, not Paragraph 11 of the RUO. Section 124 states that a new permit must include the same terms and conditions as the “existing authorization” which is defined as the RUO and the 2008 SUP. (“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’] ... the Secretary of the Interior is authorized to issue a special use permit with the same terms and conditions as the existing authorization...”) Alternatives B, C and D consider issuance of a SUP to DBOC that conforms to the discretionary authority granted in section 124.

PN4100 - Purpose and Need Issue: Precedence

<p>Concern Statement 35896</p>	<p>Commenters expressed concern that issuance of a new SUP could set a precedent in the following ways:</p> <ul style="list-style-type: none"> -allowing commercial use (or other activities inconsistent with wilderness) within congressionally designated potential wilderness -intentional introduction of exotic species to wilderness areas -weakening or nullifying other existing leases on federal land
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NPS Response to Concern Statement 35896:

These comments generally appear to be directed at the permit authority given to the Secretary under section 124, rather than the impacts or specific alternatives being analyzed in this EIS. Moreover, whether or not issuance of a permit to DBOC would set a legal or policy precedent for other units of the national park system or other wilderness areas is generally beyond the scope of this EIS.

In relevant part, section 124 provides, “[N]othing 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.” It is unclear how a statutory prohibition on citation as precedent could be enforced. It is clear, however, that section 124 does not provide authority for issuing permits to commercial operations in other units of the national park system, because section 124 does not have “application to any location other than Point Reyes.”

Section 124 could nonetheless still act as a precedent for similar future legislation that might allow otherwise prohibited activities in a wilderness area or in a national park unit, and a decision to grant a permit to DBOC under section 124 might reinforce any such precedent.

PN5000 - Authority Over Drakes Estero and Adjacent Lands

Concern Statement 35897	Commenters requested confirmation that NPS was provided with first right of refusal and stated that such a right remains valid.
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NPS Response to Concern Statement 35897:

Paragraph 14 of the RUO states “should the 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.” Documents show that the NPS was notified of the transfer of the RUO. At that time the NPS did not exercise paragraph 14 of the RUO or contest the transfer of the remaining 7-year term from Johnson’s Oyster Company to DBOC.

Concern Statement 36946	<p>Commenters stated that CDFG has primary jurisdiction over Drakes Estero and/or requested clarification on the following items related to CDFG's authority in Drakes Estero:</p> <ul style="list-style-type: none"> -does NPS consider DBOC's past, present, or future CDFG leases to be lawful? -what are the differences in jurisdiction between state and federal management of Drakes Estero? -what is the NPS justification for claiming the state relinquished jurisdiction over Drakes Estero, specifically in light of the state's reserved right to fish? -what specific sections of the CDFG lease would be incorporated in the new SUP?
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NPS Response Concern Statement 36946:

CDFG is a cooperating agency for this EIS. Throughout the process of developing the EIS, the NPS has worked with CDFG to clarify the division of roles and responsibilities over DBOC’s operation should a new NPS permit be issued to DBOC. The EIS explains the effect of the 1965 Act conveying the water bottoms in Drakes Estero to the United States. As explained in the EIS, the 1965 Act did not reserve to the State of California the authority to issue aquaculture leases in the Estero. The legal authority to determine whether DBOC may use the water bottoms in the Estero rests with the NPS, not the CFGC. Although the CFGC does not have leasing authority for the water bottoms in the Estero, CDFG would continue to regulate many aspects of DBOC’s operation. This future realignment of NPS’s and CDFG’s roles and

responsibilities over DBOC reflects correspondence on this matter as well as more recent discussions between the two agencies, and information received from the California State Lands Commission (SLC). Additional detail about this correspondence is provided in the Final EIS on pages 6-9.

The SLC is the agency in California that has jurisdiction over sovereign lands, including tide and submerged lands, within the state. The SLC has issued an opinion regarding the extent of the state’s authority over DBOC’s operations in the Estero. In a letter dated July 26, 2007 following a meeting with DBOC and others, the SLC concluded that the 1965 conveyance divested the state of any real property interest in the tide and submerged lands in Drakes Estero except for the mineral estate. The SLC also concluded that the “right to fish” as reserved by the state in the 1965 conveyance pertains to the taking and capturing of fish from the wild, not aquaculture.

The NPS, not the CFGC, has the legal authority to determine whether DBOC may occupy water bottoms in Drakes Estero for its operation. The action alternatives in this EIS reflect the realignment of NPS’s and CDFG’s roles and responsibilities with regard to DBOC’s operation. Should the Secretary issue a new SUP to DBOC, DBOC would no longer operate under a state water bottom lease from the Fish and Game Commission. Relevant provisions of the existing CDFG permit would be incorporated into the SUP including repair and cleanup requirements, payment requirements, the maintenance of an escrow account as “a financial guarantee of growing structure removal and/or cleanup expense in the event the lease is abandoned or otherwise terminated”, and rights of inspection (including premises, equipment and books pertaining to the cultivation on the leased premises).

Although DBOC would no longer operate pursuant to a state water bottom lease, DBOC would still be subject to regulation by CDFG as set forth in CDFG’s 2008 letter. CDFG would not continue to collect “payment of taxes and fees.” The privilege use tax is tied to the lease and is a part of the lease. In granted tidelands, the leasing authority (not CDFG) determines whether and what the rate is. The basis for fee collection for any SUP issued by NPS in Drakes Estero would be based on the findings of the DOI-Office of Valuation Services appraisal. The aquaculture operation would still be required to hold an annual Aquacultural Registration from CDFG (State Fish and Game Code 15101). This is typical of all aquacultural operations on private or granted tidelands. The role of CDFG would include Aquaculture Registration, import of aquatic organisms (CDFG live aquatic importation permit is required), and disease control.

Finally, some commenters have asked NPS to clarify whether the state ever had leasing authority over shellfish operations in the Estero. Prior to the 1965 conveyance of the tide and submerged lands in Drakes Estero to the United States, the State of California had leasing authority over the commercial shellfish operation in the Estero. Following the 1965 conveyance of the tide and submerged lands to the United States, the NPS allowed the state water bottom lease to remain in effect because both the NPS and the CDFG believed at that time that the state’s reserved “right to fish” included the management and leasing of state water bottoms for aquaculture. This belief, although erroneous, is reflected in some letters between the NPS and CDFG from 1965 and 1966 and in some NPS documents from the early 1970s. The recent analysis by NPS, the Office of the Solicitor, and the SLC confirm that this earlier interpretation was incorrect.

Concern Statement 36952	A commenter stated that NPS policies are not legally binding unless formalized via rulemaking.
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NPS Response to Concern Statement 36952:

The commenter is correct that policies differ from regulations. It is true that NPS policies are not legally binding, in the sense that they are not enforced directly against park visitors, and that third parties cannot sue NPS in court over alleged violations of policy. But adherence to NPS policies is mandatory for NPS employees when they make management decisions. The courts have generally held that they will defer to decisions that are properly made pursuant to those policies. An analysis of how the alternatives conform to NPS policies is therefore appropriate in this EIS.

The NPS policies referenced in the EIS primarily include those contained in the NPS's *Management Policies 2006*. The Management Policies were adopted following public comment that involved input from more than 45,000 commenters during a 127 day public comment period. The Management Policies are the "highest of three levels of guidance documents in the NPS Directives System" (NPS 2006d).

The Management Policies apply to all management decisions affecting units of the National Park System such as Point Reyes. A decision to issue a SUP is a management decision affecting a park area.

Adherence to directives contained in the Management Policies is "mandatory unless specifically waived or modified by the Secretary, the Assistant Secretary or the Director." (NPS 2006d). In addition, section 124 provides the Secretary with express authority to issue a SUP to DBOC "notwithstanding any other provision of law." As a result, NPS's Management Policies remain relevant to the action alternatives considered in this EIS, and it is appropriate for the EIS to analyze the degree to which issuance of a SUP would conform to existing NPS policies.

Concern Statement 36953	Commenters stated that the current SUP applies only to the onshore elements of DBOC's operations, not the offshore elements.
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NPS Response to Concern Statement 36953:

The 2008 SUP applies to both the onshore and offshore areas used by DBOC for the cultivation and processing of shellfish. The geographic areas included in the 2008 SUP are depicted on the maps attached to the SUP.

NPS also notes that section 124 provides that if the Secretary decides to issue a SUP to DBOC, the new SUP must have the "same terms and conditions as the existing authorization." Section 124 defines the term "existing authorization" as the "Drake's Bay Oyster Company's Reservation of Use and Occupancy and associated special use permit."

With regard to the comment that the state's retained right to fish precludes NPS from exercising control over DBOC's operations in the Estero. Please see concern statement 36946.

PN5500 - Purpose of Point Reyes National Seashore

Concern Statement 35907	Commenters stated that commercial shellfish operations are compatible with the Seashore's purpose (and not incompatible with wilderness), citing the enabling legislation, intent, Conservation and Stewardship Publication #14, and personal opinion.
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NPS Response Concern Statement 35907:

The Seashore’s enabling legislation does not authorize aquaculture. See the “Purpose and Significance of Point Reyes National Seashore” section on pages 14-16 of the Final EIS for a description of the park purpose and significance, as well as a definition of “ranching and dairying purposes,” as indicated in the park legislation. A discussion on the compatibility of aquaculture operations within congressionally designated wilderness areas (including potential wilderness) is provided in the “Establishment of Wilderness at Point Reyes National Seashore” section on pages 16-18 of the Final EIS.

Concern Statement 36959	Commenters stated that commercial shellfish operations are not consistent with the purpose of the Seashore, citing NPS goals and policies, the Wilderness Act, and the Point Reyes Wilderness Act.
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NPS Response to Concern Statement 36959:

The Seashore’s enabling legislation does not authorize aquaculture. See the “Purpose and Significance of Point Reyes National Seashore” section on pages 14-16 of the Final EIS for a description of the park purpose and significance, as well as a definition of “ranching and dairying purposes,” as indicated in the park legislation. A discussion on the compatibility of aquaculture operations within congressionally designated wilderness areas (including potential wilderness) is provided in the “Establishment of Wilderness at Point Reyes National Seashore” section on pages 16-18 of the Final EIS.

PN5550 - Purpose of Point Reyes National Seashore: Ranches

Concern Statement 35969	Commenters expressed concern about inconsistency and the impact on the SUPs held by the ranches if a new SUP is not issued to DBOC.
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NPS Response to Concern Statement 35969:

Continuation of ranching and dairy operations in Point Reyes National Seashore is legislatively authorized. The decision on the DBOC SUP will not affect this. See pages 14-16 (“Purpose and Significance of Point Reyes National Seashore”) of the Final EIS for more information.

The Final EIS includes Map NS-PR-7002 of the pastoral zone that was referenced in the Seashore enabling legislation. Despite the presence of Johnson’s Oyster Company at the time of this legislation, Drakes Estero and an upland buffer including the oyster operation were not identified as part of the pastoral zone. In 1976, Congress established the Point Reyes Wilderness, including the designation of the Drakes Estero waters as potential wilderness.

Current land management is consistent with 1980 GMP land management zoning for Wilderness, natural zone and pastoral zone areas. The 1980 GMP identifies a “Special Use Zone” and within that area defines four subzones including “Pastoral Lands,” Radio Range Station,” “Oyster Farm,” and “Lands Not to be Acquired.” The Pastoral lands subzone permits “the continued use of the existing ranchlands for ranching and dairying purposes” (NPS 1980). Areas identified in the 1980 GMP as within the pastoral zone, continue under agricultural operations, with minor adjustments for resource protection and other purposes. The 1980 GMP clearly identifies the waters of Drakes Estero as within the Wilderness sub-zone and identifies a separate, “Oyster Farm” special use zone at the location of the upland facilities, and separate from the pastoral zone. At the time the GMP was issued, the RUO authority was still valid for another 32 years.

PN5600 - Relationship to Other Laws, Policies, and Plans

Concern Statement 35911	<p>Commenters requested that additional relevant law, policies, and/or plans be considered in the EIS, including the following:</p> <ul style="list-style-type: none"> -Marin County's planning process and policies -California Environmental Quality Act (CEQA) -California Aquatic Invasive Species Management Plan -National Sea Grant Program -Executive Order 13112 -Beach Act -Clean Water Act -Coastal Zone Act Pollution Prevention Act -Resource Conservation and Recovery Act -Marine Plastic Pollution Research and Control Act -Marine Debris, Research, Prevention and Reduction Act -Shore Protection Act -Marine Protection, Research, and Sanctuaries Act
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NPS Response to Concern Statement 35911:

The Final EIS lists and explains the relevant authorities on pages 6-9. State authorities, while they are discussed in the EIS where instructive, are not generally applicable to federal actions. None of the other authorities cited here were found sufficiently relevant to the decision under section 124 or its impacts to warrant discussion.

Concern Statement 36924	<p>A commenter requested that “take” under the Marine Mammal Protection Act and Marine Life Protection Act be defined.</p>
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NPS Response to Concern Statement 36924:

The definition of take under the Marine Mammal Protection Act is provided on page 57 of the Final EIS. The definition of take under the Marine Life Protection Act has been added to page 63 of the Final EIS. It is the responsibility of the enforcing agency to determine whether “take” of marine organisms has occurred.

Concern Statement 36926	<p>A commenter stated that DBOC activities are inconsistent with the requirements of the Wilderness Act because it cannot be shown that the oyster operation supports or enhances the wilderness character or expressly benefits the coastal wilderness qualities for which Point Reyes was initially protected.</p>
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NPS Response to Concern Statement 36926:

The NPS acknowledges that authorizing DBOC to continue its operations would not be consistent with certain provisions of the Wilderness Act, nor NPS *Management Policies 2006*. However, the Secretary is authorized under section 124 to issue a new SUP “notwithstanding any other law or policy,” which includes the Wilderness Act. If a 10-year permit is issued, the NPS would delay conversion of congressionally designated potential wilderness to congressionally designated wilderness until 2022. Regardless of the alternative selected, the NPS would continue to be subject to the minimum requirements analysis for all administrative actions, consistent with management of potential wilderness areas as prescribed by NPS *Management Policies 2006* (NPS 2006d, section 6.3.1).

Please see related response to concern 36233 regarding impacts on wilderness.

PN5610 - Relationship to Other Plans: GMP

<p>Concern Statement 35915</p>	<p>Commenters requested additional detail or clarification regarding the relationship of this project to the Seashore's GMP, specifically:</p> <ul style="list-style-type: none"> -the GMP supports the continued presence of commercial oyster operations in Drakes Estero -what is the justification for going against the support expressed in the GMP? -what is the status of a new GMP and how will it address this situation?
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NPS Response to Concern Statement 35915:

The relationship of the alternatives considered in this EIS to the Seashore's existing and future GMPs is described on pages 45-46 of the Final EIS.

The existing General Management Plan was completed in 1980. At that time, the RUO for the oyster operation had a remaining term of 32 years, until November 30, 2012. It was therefore appropriate for the GMP to include objectives for NPS management and oversight of the commercial oyster company during this period. One of the GMP's objectives in this regard was to monitor and improve maricultural operations. Planning objectives, however, do not change legal requirements. As explained in the response to concern 36968, absent the enactment of section 124, the NPS did not have authority to extend the RUO beyond 2012. The objective expressed in 1980 of monitoring and improving shellfish operations did not change the fact that NPS did not, at that time, have the authority to extend the oyster operation beyond 2012.

The Secretary's decision with regard to the future of DBOC's operation will be reflected in the forthcoming GMP.

PN5620 - Relationship to Other Plans: Johnson Oyster Co EA (1998)

<p>Concern Statement 35917</p>	<p>Commenters question why the analyses in the EIS are different from the Environmental Assessment conducted for improvements at the Johnson Oyster Company in 1998.</p>
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NPS Response to Concern Statement 35917:

In 2003, as a result of the ongoing and unresolved violations, and lack of response by the Johnson Oyster Company, the NPS revoked any authority for construction and replacement activities authorized by the 1998 EA and FONSI (NPS 2003c). Therefore, actions considered in the 1998 NEPA process that had not been completed prior to the NPS's revocation of the FONSI in 2003 are being reviewed in this EIS in accordance with existing NPS policies and procedures.

PN5630 - Relationship to Other Policies: Aquaculture Law & Policy

<p>Concern Statement 36071</p>	<p>Commenters requested that federal and state aquaculture laws and policies be considered as relevant to the discussion in the EIS, including the following:</p> <ul style="list-style-type: none"> -Department of Commerce Aquaculture Policy of 2011 -National Oceanic and Atmospheric Administration's (NOAA) Marine Aquaculture Policy -National Aquaculture Act of 1980 -Department of Commerce National Shellfish Initiative
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NPS Response to Concern Statement 36071:

The National Aquaculture Act of 1980 (Act) does not identify the National Park Service as having responsibility for programs related to aquaculture, and, therefore, have not been added to the relevant laws and policies section of the EIS. Rather, the Act states a general policy of encouraging the development of aquaculture in the United States. The Act required the publication of a National Aquaculture Development Plan to recommend actions that should be taken to further the policies of the Act. This plan was issued in 1983. The 1983 National Aquaculture Plan does not identify national park units as suitable locations for the enhancement of aquaculture opportunities or research. The only agencies within the Department of the Interior that are identified in the plan are the U.S. Fish and Wildlife Service, the Office of Territorial Affairs (now the Office of Insular Affairs), and the Bureau of Indian Affairs.

Aquaculture policies issued by the Department of Commerce (DOC) and the National Oceanic and Atmospheric Administration (NOAA) have not been added to the relevant laws section of the EIS because these policies do not apply to the National Park Service. For example, NOAA's aquaculture policy states, "[T]he purpose of this policy is to enable the development of sustainable marine aquaculture within the context of the National Oceanic and Atmospheric Administration's (NOAA) multiple stewardship missions and broader social and economic goals." The policy further states that, "[F]ederal support, engagement, and authorities related to aquaculture development span a number of agencies, in particular the Food and Drug Administration, Environmental Protection Agency, Army Corps of Engineers, Fish and Wildlife Service, and the U.S. Department of Agriculture. These agencies collaborate with each other, industry, states, and academia to address issues related to aquaculture facilities and to promote the development of new technologies that improve the sustainability of the industry." As these provisions demonstrate, the Department of Commerce and NOAA aquaculture policies do not apply to the National Park Service, nor do they envision the development of aquaculture within national parks.

The same is true of NOAA's National Shellfish Initiative. The Initiative sets forth actions that NOAA will undertake with regard to the development of the aquaculture industry and related research. The National Shellfish Initiative does not encourage the development of aquaculture operations in national parks.

Although DOC and NOAA policies referenced in the comments do not apply to the NPS, the NPS requested that NOAA participate in the EIS as a cooperating agency. NOAA-NMFS has regulatory and enforcement requirements under the Magnuson-Stevens Fishery Management Act (Essential Fish Habitat), Marine Mammal Protection Act (MMPA), and Endangered Species Act (coho salmon and steelhead). NOAA agreed to become a cooperating agency and has provided comments on the EIS.

Finally, commenters requested that state and local plans regarding agriculture and aquaculture be addressed in the EIS. Local plans such as these do not apply to lands owned and managed by the United States unless Congress has directed otherwise. The only state plan that is relevant to the alternatives considered in the EIS is the state's coastal management program. Under the federal Coastal Zone Management Act, federal actions involving the issuance of permits are subject to the state's consistency certification process. This process considers the consistency of the permitting action with enforceable policies contained in the state's coastal program. The state's coastal program includes enforceable policies relating to public access, recreation, the marine environment, agricultural lands, and development. The National Park Service is coordinating with the California Coastal Commission on the consistency certification process.

PN5800 - Establishment of Wilderness at Point Reyes National Seashore

<p>Concern Statement 35920</p>	<p>Commenters stated that Drakes Estero does not qualify as wilderness for the following reasons:</p> <ul style="list-style-type: none"> -use of the area by Native Americans -the area should be considered "trammeled" -use by visitors -the area was never intended to be wilderness -surrounded by ranches
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NPS Response to Concern Statement 35920:

Commenters raised a number of concerns related to the qualification of the area as wilderness because of past land uses, surrounding land uses, and the levels of use by the public. Wilderness is a land management designation placed on an area by congressional action. Congress established the Point Reyes Wilderness in October 1976 (PL 94-544 and PL 94-567), culminating five years of planning and public hearings. Similar land uses were present at the time of these deliberations. Section 3 of PL 94-567 establishes that potential wilderness can be designated wilderness by notice in the Federal Register that all nonconforming uses have ceased. The EIS delineates the Congressionally established boundaries of wilderness, including potential wilderness within the project area.

It is the obligation of the NPS to manage areas designated by Congress as wilderness, consistent with the Wilderness Act and NPS *Management Policies 2006*. Past land uses or surrounding land uses do not affect the ability of Congress to designate an area as wilderness, nor the obligation of the NPS to manage those Congressionally-designated areas as wilderness. The NPS, by its management policies (NPS 2006d, section 6.3.1) is required to manage potential wilderness as wilderness with the exception of any ongoing nonconforming use.

<p>Concern Statement 36968</p>	<p>Commenters requested additional information and/or reflected upon the original intent of wilderness management within the Seashore with the following specific issues in mind:</p> <ul style="list-style-type: none"> -was the original intent to exclude commercial shellfish operations? -is NPS obligated to refuse a new SUP as stated in the 2004 solicitor's opinion? -does the wilderness legislation apply to the bottom lands of Drakes Estero? -is it possible that the NPS was meant to preserve the commercial shellfish operations as a historic resource within the wilderness? -is it possible that the NPS was meant to preserve a public trust resource within the wilderness?
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NPS Response to Concern Statement 36968:

As part of the Point Reyes Wilderness Act of 1976 (PL 94-544) and two days later as part of PL 94-567, Drakes Estero was designated by Congress as potential Wilderness. Further extended discussion of the history of this act is beyond the scope of this EIS. As noted in the 2004 opinion of the Field Solicitor, NPS is mandated by the Wilderness Act and Point Reyes Wilderness Act to convert potential wilderness to wilderness status as soon as the nonconforming use can be eliminated. And as discussed in the response to Concern Statement 36942 and elsewhere in the EIS, neither the RUO nor any authority other than section 124 allows DBOC's nonconforming use to continue beyond November 30, 2012.

As for the comment as to whether the oyster farm is a historic resource, a Determination of National Register Eligibility (DOE) was prepared for DBOC onshore and offshore facilities (Caywood and Hagen 2011). It found that while the oyster-growing operation in Drakes Estero is significantly associated with

the rebirth and development of the California oyster industry, which began in the 1930s, the property is ineligible for listing in the National Register because it lacks historic integrity. The State Historic Preservation Officer (SHPO) has concurred with this determination. As described in the EIS, this property and operation are not eligible and thereby do not represent historic structures, resources, or landscape as defined under the National Historic Preservation Act.

For additional information regarding management authority over Drakes Estero, please see concern statement 36946. For additional information regarding state management of fishing through the Marine Life Protection Act in Drakes Estero please see concern statement 36371.

PN5900 - Commercial Shellfish Operations in Drakes Estero

Concern Statement 35923	Commenters requested a number of editorial revisions to this section summarizing commercial shellfish operations in Drakes Estero, including items such as descriptions of the CDFG lease, additional history on Johnson Oyster Company, and corrections of regulatory authority.
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NPS Response to Concern Statement 35923:

These editorial suggestions to revise the text were reviewed, considered, and incorporated into the “Commercial Shellfish Operations in Drakes Estero” section of the Final EIS on pages 18-24, as appropriate.

Concern Statement 36998	Commenters requested additional detail on the violations that have taken place in Drakes Estero, such as misplacement of Manila clams.
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NPS Response to Concern Statement 36998:

Specific violations regarding Manila clam placement were addressed in the EIS. Additional information regarding violations cited by the California Coastal Commission (CCC) in letter(s) of February 1, 2012, July 30, 2012, and October 24, 2012 are included in the chapter 1 sections “Drakes Bay Oyster Company: 2005 to Present” (pages 21-24) and in the “California Coastal Act” discussion on pages 59-62. Editorial changes as requested by CCC have been addressed in the “Commercial Shellfish Operations in Drakes Estero” section of the Final EIS on pages 18-24.

PN6000 - NEPA Process

Concern Statement 35933	<p>Commenters questioned why an EIS is required prior to making a decision with regard to the potential issuance of a new SUP to DBOC, especially considering the following issues:</p> <ul style="list-style-type: none"> -preparation of an EIS is inconsistent with previous park practices -preparation of an EIS is inconsistent with the “notwithstanding” clause included in section 124 -the issue has been the subject of various other environmental reports
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NPS Response to Concern Statement 35933:

Although the Secretary’s authority under section 124 is “notwithstanding any other provision of law,” the Department has determined that it is helpful to generally follow the procedures of NEPA. The EIS provides decision-makers with sufficient information on potential environmental impacts, within the context of law and policy, to make an informed decision on whether or not to issue a new SUP. In addition, the EIS process provides the public with an opportunity to provide input to the decision-makers on the topics covered by this document.

Concern Statement 35934	Commenters suggested that the EIS be placed on hold until the House Committee on Oversight and Government Reform has completed their review.
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NPS Response to Concern Statement 35934:

Although the Secretary's authority under section 124 is "notwithstanding any other provision of law," DOI has determined that it is helpful to generally follow the procedures of NEPA. The EIS provides decision-makers with sufficient information on potential environmental impacts, within the context of law and policy, to make an informed decision on whether or not to issue a new SUP. The timeline for the NEPA process was maintained in order to provide the Secretary with relevant information prior to the SUP expiration on November 30, 2012. The authority granted to the Secretary of the Interior to issue a new SUP under section 124 also expires on November 30, 2012.

PN7050 - Impact Topic Dismissed: Vegetation

Concern Statement 35982	Commenters requested additional detail regarding impacts on vegetation.
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NPS Response to Concern Statement 35982:

Potential impacts of the proposed action on vegetation (primarily the coastal scrub community) would be negligible. The coastal scrub community is common in and around the DBOC facilities and along the access road; however, no changes are anticipated that would extend beyond the developed footprint as a result of implementing the no-action or action alternatives. Potential impacts from trampling would be negligible. The rare plants known to exist in the vicinity of project area were identified using inventory data provided by NPS (listed in appendix E). These plants would not be impacted by the proposed action; either because they the project area does not provide suitable habitat or because they are located outside areas of direct and indirect impacts, including within some of the adjacent coastal scrub areas and vegetated intertidal areas (NPS 2010f). Therefore, a detailed analysis of rare plants was not included in the EIS.

PN7100 - Impact Topic Dismissed: Carbon Footprint

Concern Statement 35983	Commenters requested additional detail regarding the carbon footprint associated with importing the equivalent of DBOC's shellfish production should a new SUP not be issued.
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NPS Response to Concern Statement 35983:

The mission of the NPS, as defined by the NPS Organic Act (16 USC 1), does not include food security or providing opportunities for local food sources. While some commenters assert that as a result, oysters would need to be flown in from international areas, no concrete data has been provided to the NPS to support this assertion. Oyster production in California, as a whole, appears to be increasing at a rate greater than DBOC's production. For example, as described in chapter 3 of the EIS, in 2010, DBOC produced 585,277 pounds of shucked oyster meat (6.89 million oysters), a 28 percent increase over 2009 production levels. During this same period, the California oyster market increased 43 percent. An increase in Pacific oyster production in Humboldt Bay was the primary contributor to this change (the California Pacific oyster market increased 48 percent, by weight, between 2009 and 2010) (CDFG 2011e). Based on this information, it is likely that at least some portion of the current DBOC production could be accommodated by other operations in the state of California.

Furthermore, it is possible that demand may shift to another product or that the market demand would lead to new production in other California locations. Because there is no certainty regarding how the market and demand would respond, there is no way to calculate quantifiable, reasonably foreseeable impacts from global carbon emissions that can be meaningfully analyzed.

PN7150 - Impact Topic Dismissed: Geologic Resources

Concern Statement 37005	A commenter requested that geologic resources be addressed in more detail due to the potential for sediment disturbance.
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NPS Response to Concern Statement 37005:

Sediment disturbance is discussed in the appropriate impact topics that are affected by sediment dynamics. See “Impacts on Water Quality (pages 423-441), Impacts on Eelgrass (pages 326-340), and “Impacts on Wildlife and Wildlife Habitat: Benthic Fauna” (pages 341-356). Text has been added to these discussions where appropriate.

PN7200 - Impact Topic Dismissed: Cultural Resources

Concern Statement 35984	<p>Commenters requested additional discussion on the following items related to cultural resources:</p> <ul style="list-style-type: none"> -archeological evidence of prehistoric shellfish cultivation -historic significance of viewshed experience by Sir Francis Drake -role of ranches and shellfish operation in historic local landscape -significance of the last on-site oyster cannery in California -cultural experience for visitors -SHPO concurrence with the DOE
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NPS Response to Concern Statement 35984:

Text has been added to the “Cultural Resources” section on pages 44-48 of the Final EIS, where appropriate.

For the specific items identified above, the following changes have been made:

Archeological evidence of prehistoric shellfish cultivation. Note that studies by Konzak and Praetzellis (2011) and Babalis (2011) indicate that Olympia oyster has historically had a very limited distribution in Drakes Estero. The Konzak and Praetzellis (2011) study, titled *Archaeology of Ostrea lurida in Drakes Estero, Point Reyes National Seashore*, discusses in detail the archeological evidence of historic shellfish populations in Drakes Estero. The primary conclusions of this study are summarized in the following excerpt from that report: “...there is no archaeological evidence that a sizeable population of [Olympia oyster] inhabited Drakes Estero and was utilized as a primary dietary resource by the Coast Miwok.” Further, “While small populations of the Olympia oyster may have existed in the Estero and been utilized by the Coast Miwok, the relative abundance of oyster remains in Tomles Bay and their absence at all but two archaeological sites in Drakes Estero make it more likely that the oysters were brought in from Tomales Bay.” This report has been available for public access on the NPS Point Reyes website.

Historic significance of viewshed experience by Sir Francis Drake. The historic significance of the viewshed experienced by Sir Francis Drake is speculative and cannot be analyzed further.

Role of ranches and shellfish operation in historic local landscape. The oyster-growing facilities lie within but do not contribute to the significance of the Point Reyes Ranches Historic District, which was determined eligible for the National Register (Historical Research Associates, Inc. 2008).

Significance of the last onsite oyster cannery in California. The EIS acknowledges that DBOC operates the last oyster cannery in California. Canning operations at DBOC occur within an onsite shipping container. This container does not have cultural significance and none of the structures at DBOC are potentially eligible for listing on the National Register of Historic Places.

Cultural experience for visitors. Use of the DBOC onshore area over time by DBOC customers and park visitors is not considered a historic or cultural resource as defined by the National Historic Preservation Act or NPS Management Policies 2006. Use of the site is addressed in the section on visitor experience and recreation in chapters 3 and 4.

SHPO concurrence with the DOE. Under the “Cultural Resources” dismissal section, a summary of the DOE preparation and review by SHPO has been provided. The SHPO concurred on August 4, 2011 with the NPS determination that the DBOC property is ineligible for listing on the National Register (see appendix D of Final EIS for a copy of the letter).

Concern Statement 36992	A commenter requested that cultural resources be addressed in chapter 3 of the EIS.
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NPS Response to Concern Statement 36992:

A description of the history of commercial shellfish operations in Drakes Estero is provided in chapter 1 on pages 18-24 of the Final EIS. Because the impact topic of cultural resources is considered but dismissed from further analysis, a brief summary of cultural resources (including archeological resources, cultural landscapes, historic structures, and ethnographic resources and sacred sites) in the Drakes Estero area is provided on pages 44-48 of the Final EIS.

Concern Statement 37777	A commenter stated that DBOC should be included in the pastoral/agricultural zone of the park, as oyster farming is an important part of the agricultural heritage of the Drakes Bay era. The commenter also stated that historic integrity should not be based on architectural integrity, specifically for an agricultural operation.
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NPS Response to Concern Statement 37777:

Please refer to pages 14-16 of the Final EIS for the NPS interpretation of the pastoral/agricultural zone and its relation to DBOC. Refer to pages 44-48 for an explanation of historic integrity and how cultural resources are defined.

PN7300 - Impact Topic Dismissed: Environmental Justice

Concern Statement 35957	<p>Commenters requested additional detail regarding impacts related to environmental justice including:</p> <ul style="list-style-type: none"> -disproportionate impacts on women and ethnic minorities -loss of housing and jobs
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NPS Response to Concern Statement 35957:

As explained on page 48 of the Final EIS, Executive Order 12898 is required to consider potential environmental justice impacts. Pursuant to the executive order, environmental justice impacts are those that would result in disproportionately high and adverse human health or environmental effects on minority or low-income populations. NPS evaluated whether the project could result in disproportionate impacts on environmental justice populations.

To achieve this, NPS followed the thresholds identified in the Metropolitan Transportation Commission’s (MTC) Transportation Improvement Program for the San Francisco Bay Area, as well as Executive Order 12898. MTC defined a low-income population as a community with a low-income population that is at least 30 percent of its total population. MTC defined a minority population as a community with a minority population of at least 70 percent. The use of these thresholds is consistent with the stipulations of Executive Order 12898.

However, multiple commenters suggested the dismissal of environmental justice was in error particularly that NPS failed to adequately consider impacts to minorities. NPS reexamined its thresholds and looked to the Council on Environmental Quality’s (CEQ) “Environmental Justice: Guidance Under the National Environmental Policy Act.” (Available at <http://ceq.hss.doe.gov/nepa/regs/ej/ej.pdf>). The CEQ document is a guidance document, not an executive order. The CEQ guidance provides a more expansive threshold for determination of minority populations than that identified by MTC; a census block with a population comprised of at least 50 percent minorities. The MTC’s threshold of 70 percent is based on the average minority population in the San Francisco Bay Area. Marin County is demographically different from the rest of the San Francisco Bay Area with a much higher white and higher income population. A lower threshold may be more appropriate to identify any minority populations within Inverness Census Designated Place (CDP) and Marin County. Therefore, for the Final EIS, NPS adopted the 50 percent threshold from the Executive Order.

In addition, NPS re-examined the scale at which environmental justice issues were analyzed. In the Final EIS, the affected area is defined as the Inverness CDP, as this is consistent with the scale used to describe the socioeconomic impacts of the project on a local level. Marin County is used for comparative purposes, as it the next-largest scale used to describe socioeconomic impacts. Evaluating minority populations at a scale smaller than the Inverness CDP (i.e., DBOC employees only) would inflate the intensity of impacts. See pages 48-52 of the Final EIS for additional information.

The NPS acknowledges that many of the DBOC employees are of Hispanic origin. However, as described on pages 48-49 of the EIS, the concept of race is different than the concept of Hispanic origin. As such, it is not appropriate to add the Hispanic and minority percentages together to achieve an overall minority percentage. This would result in double counting and an inflation of the actual minority population in Inverness CDP and Marin County.

Data is not available regarding the race or financial status of visitors to DBOC. Therefore, NPS cannot evaluate whether the proposed alternatives would impact visitation to DBOC by environmental justice populations.

In summary, due to the lack of low-income and/or minority populations in the vicinity of Point Reyes National Seashore, even with the more expansive threshold in the Executive Order, dismissal of the topic from detailed analysis was appropriate.

Concern Statement 38632	A commenter requested additional discussion of NPS policies and responsibilities in regards to environmental justice, in particular as they relate to public health, and stated that environmental justice be retained as an impact topic.
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NPS Response Concern Statement 38632:

As described in chapter 1 of the Final EIS, Executive Order 12898: *General Actions to Address Environmental Justice in minority Populations and Low-Income Populations*, requires all federal agencies to identify and address the disproportionately high and/or adverse human health or environmental impacts of their programs and policies on minorities and low-income populations and communities (EPA 1994). To achieve this, NPS adheres to the six principles for consideration of environmental justice described in the Executive Order (as detailed on page 48 of chapter 1 of the EIS. Based on the analysis conducted for this EIS, the public health impacts from this project are remote and negligible. For example, NPS considered

air quality as an impact topic in the EIS but dismissed it from further consideration when it determined that emissions from the alternatives would be below the “de minimis” thresholds for San Francisco Bay Area nonattainment areas (pages 41-42 of the EIS). Potential public health issues such as the water quality of Drakes Estero, including food poisoning from oyster produced at DBOC are discussed in the “Impacts on Water Quality” section of the EIS on pages xx. For these reasons, and the others identified on pages 48-52 of chapter 1, environmental justice was considered but dismissed from further analysis in the EIS.

PN7400 – Impact Topics Dismissed: Local Food

Concern Statement 36056	Commenters felt the impacts to local food if DBOC ceases to operate should be considered in the EIS.
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NPS Response Concern Statement 36056:

The impact topic of local food has been added to the “Issues and Impact Topics Considered but Dismissed from Further Analysis” section of chapter 1, on pages 43-44 of the Final EIS, and is discussed there. Socioeconomic impacts associated with the loss of DBOC are described in the “Impacts on Socioeconomic Resources” section of chapter 4.

AL4000 - Alternatives: Existing Conditions

Concern Statement 35986	<p>Commenters requested that the EIS include additional detail and/or corrections regarding the existing conditions, including:</p> <ul style="list-style-type: none"> -temporary structures -discharge of water -live shellfish holding tanks -picnic tables -shell piles -ownership of buildings -marine biotoxin sampling -management of invasive species -debris cleanup
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NPS Response to Concern Statement 35986:

Where appropriate, detail has been added and/or corrections have been made to the “Existing Conditions” section in chapter 2 on pages 85-11 of the Final EIS. It should be noted that the issuance of the 2008 SUP did not result in retroactive approval of facilities and operations that had not been previously approved by the NPS. The 2008 SUP cover page indicates that NEPA compliance for the 2008 SUP was “pending.” Before the NPS could fully initiate the NEPA document contemplated by the parties in 2008, Congress enacted section 124. This EIS is now the vehicle in which NPS is considering different operating scenarios for DBOC, as described under each alternative.

Temporary structures. Language clarifying this situation has been added to page 103 of the Final EIS. Some of DBOC’s existing facilities have not been approved by the NPS or have only been granted temporary approval. Specifically, NPS provided authorization for temporary structures; however, it was assumed that these items would be temporary and would be removed as soon as they could be replaced by permanent structures.

Discharge of water. Discharge of water is subject to certification by the San Francisco Bay Regional Water Quality Control Board; however, recent communication between the NPS and the San Francisco

Bay Regional Water Quality Control Board has indicated that a National Pollutant Discharge Elimination System permit would not be required at this time. Therefore, this sentence has been removed from the Final EIS.

Live shellfish holding facility. Additional detail on this facility was added to pages 108-109 of the Final EIS, per information provided by DBOC on June 5, 2012.

Picnic tables. Information regarding picnic table numbers and location are clarified for consideration on each of the action alternatives in chapter 2 of the EIS.

Shell piles. A date has been added to the photograph of stockpiled shells included in the Final EIS. The shell pile locations are based on the recent survey of the area, and the SUP boundary is based on NPS GIS data. The EIS does not address formation of the 2008 SUP boundary.

Ownership of the buildings. The ownership of onshore facilities at DBOC is listed in table 2-3 on page 106.

Marine biotoxin and macroalgae sampling. The SUP would establish a specific section that documents and accommodates access to established water quality stations for the purpose of California Department of Public Health pathogen and paralytic shellfish poisoning monitoring activities.

Management of invasive species. Text has been revised to note that boats and gear used in DBOC operations are not moved outside of the Estero. All other items noted about DBOC's control of invasive species are included within the alternatives descriptions.

Debris cleanup. Debris cleanup is a requirement of sections 3.2.2 and 3.2.3 of the 2007 Cease and Desist Order with the California Coastal Commission and section 7(b) of the 2008 SUP. DBOC asserts that it makes a serious effort to maintain structures and retrieve any debris from its operation as well as debris that may be a result of shellfish operations under the previous owners and is in the process of revising their Debris Removal Plan, as required by section 3.2.3 of Consent Order No. CCC-07-CD-04. The items provided by DBOC regarding the procedures they use to minimize debris to the "Existing Conditions" section. In their October 24, 2012 Notice of Intent to proceed with a new Cease and Desist and Restoration Order, the CCC concludes that as a result of documented discharge of marine debris in the form of abandoned, discarded, or fugitive aquaculture materials, DBOC is in violation of section 3.2.2 of the 2007 Cease and Desist Order.

Concern Statement 36927	Commenters requested that the EIS include additional detail and/or corrections regarding the approval of existing structures within the project area.
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NPS Response to Concern Statement 36927:

The issuance of the 2008 SUP did not result in retroactive approval of facilities and operations that had not been previously approved by the NPS. The 2008 SUP cover page indicates that NEPA compliance for the 2008 SUP was "pending." This statement reflects the understanding between NPS and DBOC at the time that the NPS would prepare an NEPA analysis presenting alternative operating scenarios for DBOC's operation through November 30, 2012. In furtherance of this understanding, the NPS and DBOC entered into a "Statement of Principles" setting forth the manner in which the parties would work together during the NEPA process. The Statement of Principles provides that DBOC would prepare a "description of their operations for NEPA evaluation" and that NPS would consider this description in developing the purpose and need for the NEPA document and alternatives to be considered. The parties' agreement that a NEPA process would be conducted to analyze options for and determine the scope of DBOC's operation through November 30, 2012 confirms that NPS had not approved each and every facility or operating practice in existence at the time the 2008 SUP was executed. Before the NPS could fully initiate the NEPA document contemplated by the parties in 2008, Congress enacted section 124. This EIS is now the vehicle in which NPS is considering different operating scenarios for DBOC.

AL5000 - Alternative A

Concern Statement 35987	Commenters question the identification of alternative A as the no-action alternative either generally or because it does not reflect existing conditions carried forward.
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NPS Response to Concern Statement 35987:

As described on page 113 of the Final EIS, the CEQ's NEPA regulations require the alternatives chapter in an EIS to "include the alternative of no action" (40 CFR 1502.14). The Department of the Interior's NEPA regulations, 43 CFR 46.30, provide two interpretations for the term "no action." The first interpretation is that no action "may mean 'no change' from a current management direction or level of management intensity (e.g., if no ground-disturbance is currently underway, no action means no ground-disturbance)." The second interpretation "may mean 'no project' in cases where a new project is proposed for implementation." This EIS contains alternatives satisfying both of these interpretations. Alternative A is a "no project" alternative. Alternative B essentially represents continuation of the current level of management intensity.

The CEQ's Forty Most Asked Questions provide additional guidance to agencies in determining which no action formulation is most appropriate in a particular EIS. The CEQ explains that the proper type of no action alternative to be considered depends on the nature of the proposal being evaluated. The first situation typically involves an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. The second type of "no action," is illustrated by situations involving federal decisions on proposals for projects. For this type of "no action" alternative, the proposed activity would not take place and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.

This second situation is more relevant to this EIS, which analyzes a federal decision on DBOC's proposal. DBOC has requested a new permit from NPS so that it may continue to operate after November 30, 2012. Absent federal action on DBOC's request for a new permit, the RUO and SUP would expire on November 30, 2012 and DBOC's operation would cease. This EIS therefore compares the effects of taking no action (i.e., no new permit for DBOC under section 124) to alternatives B, C, and D, which involve issuance of a new permit under section 124.

Multiple commenters also suggested that NPS is required to consider a "no change" alternative which would be the issuance of a new SUP with the same conditions and that this should be identified as the no-action alternative. Even though NPS has determined that alternative A is the more appropriate no-action alternative, this EIS also fully analyzes an alternative in which current conditions continue in to the future, within the constraints of section 124. That alternative is alternative B.

Concern Statement 35988	Commenters requested additional detail on the actions that would take place under alternative A, including the following: -removal of the buildings -restoration of the site -installation of a gate at Sir Francis Drake Boulevard
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NPS Response to Concern Statement 35988:

Removal of buildings. The narrative in the Final EIS has been refined to identify NPS-owned property (property that was present and acquired at the time of purchase) and DBOC-owned property (property that was placed on the property after the RUO was established). Figure 2-6 also shows which buildings would be removed. The RUO and SUP each contain specific language regarding the timing and removal

of personal property. The removal of personal property is addressed generally under the elements common to all alternatives and more specifically under each alternative.

With respect to the timeline for removal of property under alternative A, the removal of personal property within the 1.5 acre RUO area is defined under Paragraph 12 of the RUO. Paragraph 12 states the Vendor “shall remove all structures and improvements placed on the premises during the period of its reservation. Any such property not removed within 90 days after the expiration of the Vendor’s reservation 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 the Vendor of liability for the cost of removal of such property from the reserved premises.” This 90 day window is only applicable within the 1.5 acre RUO and not to any other areas of the current SUP. Section 23(a) of the SUP states that at the conclusion of existing authorizations the “permittee shall surrender and vacate the premises,” remove personal property and return the premises to good order. Section 23(b) establishes that if after conclusion of the permitted uses the permittee shall fail to remove personal property, the permitter “may cause it to be removed and the Premises to be repaired at the expense of Permittee.” Section 23 of the SUP establishes that termination is on the date of termination and there is no holding over on the property. Similar clarification was added to page 114 of the Final EIS.

Under all action alternatives, any new construction proposed by DBOC would be considered personal property and subject to the removal terms and conditions as presented in the SUP.

Finally, consistent with the current SUP, which incorporates by reference the state shellfish lease, the racks are identified as part of the operation to be removed by the permittee upon termination of the lease. Further, the California Department of Fish and Game holds an escrow account for the purpose of covering the removal of materials and structures from the growing area.

Restoration of the site. As defined in section 23(a) of the SUP, the “Permittee shall also return the premises to as good order and condition (subject to wear and tear and damage that is not caused directly or indirectly by Permittee) as that existing upon [April 22, 2008]” (NPS 2008b). Restoration efforts by the NPS are beyond the stated purpose of the proposed project, which is to evaluate whether the Secretary should exercise the discretion granted under section 124 to issue a 10-year permit to DBOC. Plans for comprehensive site restoration would be developed in the future and subject to additional NEPA compliance.

Installation of a gate at Sir Francis Drake Boulevard. The Final EIS identifies installation of a gate at the entrance to the onshore facilities at Sir Francis Drake Blvd under the no action alternative. The intent of the gate is to prevent boat access to the Estero during the harbor seal pupping closure period (March 1 – June 30). Pedestrian access to Drakes Estero would continue unimpeded. Other park roads have gates on them in order to allow the park to close the road for various circumstances. This gate would not prevent public access to the Estero or the shoreline; rather it is intended to deter nonmotorized boat access in to the Estero during this period. Signage associated with the gate would inform the public as to the reasons for the closure. The gate would be standard and the installation procedures would include digging of holes for the posts, anchorage of those posts, and hanging of the gate on the posts. The gate would be tied in to a split rail fence, similar to that at the overlook just to the west along Sir Francis Drake Boulevard.

AL6000 - Alternatives: Elements Common to All Action Alternatives

Concern Statement 35990	<p>Commenters suggested that additional items be considered under the action alternatives, including the following:</p> <ul style="list-style-type: none"> -eliminate nonnative species cultivation -require DBOC to reimburse NPS for cost of EIS preparation -limit harvest to occur less frequently than once a year -replace the DBOC sign at Sir Francis Drake Blvd -eliminate production limits -allow picnic tables under all action alternatives -install a gate at Sir Francis Drake Boulevard -increase of harbor seal protection distance
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NPS Response Concern Statement 35990:

Nonnative Species Cultivation. Section 124 of PL 111-88 provides to the Secretary of the Interior (Secretary) the discretionary authority to issue a new SUP to DBOC for a period of 10 years with the same terms and conditions as DBOC's existing authorizations (i.e., the SUP and the RUO). The alternatives presented in the EIS would allow DBOC to cultivate the same types of nonnative species that it is allowed to cultivate under the existing authorizations. These species are the Pacific oyster (*Crassostrea gigas*) and Manila clam (*Tapes philippinarium*). The extent of Manila clam distribution varies among alternatives B and D, and production limits also vary. The production of Manila clams would not be authorized under alternative C. While Manila clams were permitted in Area 2 in 2008, the bottom bag culture method used at the time was not consistent with authorized methods for that permit. Additionally, in the 2012 NAS review of the Draft EIS, the NAS committee suggested removal of Manila clams as an approach to reduce risk of establishment by this known invasive species along the Pacific coast. The elimination of nonnative species cultivation also is included in the no-action alternative. As described under the "Elements Common to All Action Alternatives" section, DBOC has withdrawn their request to cultivate European flat oyster (*Ostrea edulis*); therefore, it is no longer considered in the Final EIS.

Payment for the EIS. At the time the 2008 SUP was signed, the NPS and DBOC entered into a statement of principles (appendix C) which states that DBOC will not be responsible for covering the costs of a NEPA document. The Statement of Principles contemplated that the NPS would prepare a NEPA document to assess alternative scenarios for DBOC's operation between 2008 and November 30, 2012. Before the NPS could prepare a NEPA document addressing DBOC's operations during that time period, Congress enacted section 124. The NPS has stated that it would follow the Statement of Principles to the extent applicable to this EIS process. The NPS agreed to assume the cost of preparing this EIS.

Production Levels. The action alternatives presented in the Final EIS describe different levels of production, consistent with section 4(b)(i) of the SUP which states that "Production of all shellfish species shall be capped at the 'current production level' as determined under the California Coastal Commission Consent Order CCC-07-CD-04." The CCC's Consent Order defines "current production level" as "the amount harvested *in the last year* and any projected increases in yield *for the coming year*." (CCC-07-CD-04, section 3.2.10, emphasis added.) Because the Consent Order was issued in 2007, the relevant time period reflected in the CCC definition is 2007 and 2008. The CCC has not yet provided an exact number for "current production level." The production level in alternative C represents conditions present in 2008 when the SUP was signed; the production level in alternative B represents 2010 conditions when this EIS process began; and alternative D represents the level of production that DBOC submitted to the CCC for approval and which the CCC later rejected. The conversion rate used during establishment of these production levels is 100 oysters per gallon and 8.5 pounds per gallon and is defined as the average annual production over a rolling three year period, which would include the current year and the two previous years.

Commenters suggested that the production limits of any amount are not appropriate because variable growing conditions in a given year could lead to higher levels of survival, etc. This concern has been addressed in the Final EIS. The production level under alternatives B, C, and D is defined as the average annual production over a rolling three year period, which would include the current year and the two previous years, rather than as a fixed, yearly ceiling. This modification would allow DBOC to adapt its planting and harvest levels in response to more or less productive years. The retention of production levels is technically and economically feasible. It is also consistent with section 124 which requires that any new permit contain the same terms and conditions as the existing authorizations.

Harvest Frequency. The EIS presents what is known about the operational aspects of DBOC in chapter 2 (pages 92-111). Cultivation of shellfish is an ongoing operation with shellfish harvested year-round. All aspects of the operation are occurring on a weekly to monthly basis. Limitation of harvest to less than once per year is not considered feasible to the operation.

DBOC Sign. Commenters addressed replacement of the DBOC sign at Sir Francis Drake Blvd. The road from Sir Francis Drake Blvd to the DBOC structures is a park road and not part of the RUO or SUP. The NPS has been in communication with DBOC regarding DBOC requests for signage on Sir Francis Drake Boulevard. The NPS has reiterated that the location is not part of the permit or RUO area, and content of signs must be compliant with NPS Management Policies and the Department of Transportation “Manual on Uniform Traffic Control Devices.” NPS *Management Policies 2006* sections 9.2.5 – Traffic Signs and Markings, 9.3.1.1 Signs, and 9.3.5 – Advertising, are applicable to any requests related to the signs. These policies establish strict guidelines regarding the size and content of signs throughout the Seashore, including the requirement that signs do not provide advertising.

Picnic Tables. The action alternatives presented in the Draft EIS considered picnic tables under alternatives B and D, but not under alternative C. Subsequent to the public comment period, the DBOC submitted an application for Coastal Development Permit to the CCC that requests a total of 18 picnic tables – increased from 12 currently onsite (DBOC 2012a). In addition, in that letter, DBOC requested permission to install 12 free-standing barbeques in the picnic area and one hot ash collection basin. This request was also included to the CCC as part of the CDP permit application on the same day. The NPS will consider 12 picnic tables under alternative B (representing the conditions present in 2010 when the EIS process was initiated), 12 picnic tables limited to the picnic area adjacent to the office/warehouse under alternative C, and 18 picnic tables under alternative D. The NPS evaluated the request for barbeques as part of alternative D.

As part of their February 17, 2012 (DBOC 2012a) request to the CCC and their June 5, 2012 letter to the NPS, DBOC also included additional details on the installation of the 1,050 foot intake pipe which is considered under alternative D in the EIS. These additional details are included in the description of the alternative D in the Final EIS.

Distance from Harbor Seals. Commenters requested that the NPS increase the harbor seal protection distance described in the Draft EIS. As stated in the Final EIS, the NPS considered larger protection distances, as described in the 2009 NAS report, however, given the issues associated with the ability of operators to recognize and avoid seals at greater distances, and the enforceability of this measure, the current protection zones and seasonal lateral channel closure were maintained. The 100 meter buffer was also maintained. This restriction prohibits vessels and people from approaching within 100 meters of any hauled-out seal that it outside one of the designated harbor seal protection areas.

Gate. The EIS identifies installation of a gate at the entrance to the onshore facilities at Sir Francis Drake Blvd under the no-action alternative, as described under concern ID 35988 above. A gate is not proposed under alternatives B, C, or D because DBOC and visitors to the oyster operation need year round vehicular access to the onshore areas near DBOC’s facilities.

Concern Statement 36700	<p>Commenters requested clarification or additional detail on topics regarding the action alternatives, including:</p> <ul style="list-style-type: none"> -exemption of DBOC boat traffic from seasonal boat closures -boat traffic and vessel transit plan -revised water quality sampling -rack repair -shellfish cultivation area -dredging
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NPS Response to Concern Statement 36700:

Boat Traffic During Popping Season. DBOC must use boats year round as part of their commercial operation. Exhibit A of the 2008 SUP – Harbor Seal Protection Protocol – establishes permanent and seasonal closure areas intended to reduce the possibility for disturbance of harbor seals.

Boat Traffic and Vessel Transit Plan. The Final EIS discusses all information that DBOC provided in a November 15, 2010 letter titled "1 - Vessel Transit Plan" which included a map of primary routes, two days worth of GPS information (used to develop the boat operations cover (depicted on figure 2-2) and a short description of DBOC practices. The NPS requested additional information regarding boat GPS information but DBOC did not provide additional data. As described in the EIS, the action alternatives include a permit area which would incorporate all shellfish growing operations, including boat operations. All routes and boat traffic would be required to remain within the SUP area. Exceptions for access to established water quality and Paralytic Shellfish Poisoning (PSP) stations required by the California Department of Health Services will be identified as part of any SUP.

Revised Water Quality Sampling. As described on page 116 of the Final EIS, NPS and CDPH have reviewed sampling protocols, intent, and requirements. According to CDPH, no active water quality stations are maintained outside of the existing permit area. Secondary stations are sampled less frequently. It is the responsibility of DBOC as the operator to sample the primary stations, while CDPH maintains the secondary stations (with access provided by DBOC boats). NPS will continue to coordinate with CDPH regarding access to stations 17, 18, and 19, during the established seasonal closure (March 1 - June 30). DBOC and CDPH shall notify the NPS of sampling events 24 hours prior to the event. CDPH shall review results with the NPS annually and any changes to the monitoring program should be proposed to the NPS for review consistent with the SUP. Exceptions for access to established water quality and Paralytic Shellfish Poisoning (PSP) stations required by the California Department of Health Services will be identified as part of any SUP.

Rack Repair. In their June 5, 2012 letter, DBOC proposed to repair/replace 50 racks in 2013 and another 25 racks in 2014. It is assumed that the racks would be required to be treated with an inert substance prior to installation and that installation would take place using standard best management practices. Based on the information available to NPS, revisions were made to the description of the action alternatives on page 123 of the Final EIS and to the chapter 4 analysis in the Final EIS.

Shellfish Cultivation Area. Consistent with the provisions of the existing SUP, DBOC could apply to NPS for a change in shellfish cultivation area under all alternatives. The text in the "Elements Common to All Action Alternatives" has been revised to clarify.

Dredging. Dredging of the area around the dock would be necessary to provide water depths sufficient to operate boats at low tide. While the dredging method is unknown, it should be noted that the same method would apply to alternatives B, C, and D. It is assumed that best management practices such as the use of a floating silt curtain would be required. Again, permit authorization would be required for the dredging operation, and details would be provided to the regulatory agencies by DBOC explaining the exact location of the dredged area, the amount of dredged material removed, and best management practices implemented to protect water quality. This information can be found on page 125 of the Final EIS.

Concern Statement 37403	A commenter requested clarification on what specific sections of the CDFG lease would be incorporated in the new SUP.
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NPS Response to Concern Statement 37403:

Relevant provisions of the existing CDFG permit would be incorporated into the SUP including repair and cleanup requirements, payment requirements, the maintenance of an escrow account as “a financial guarantee of growing structure removal and/or cleanup expense in the event the lease is abandoned or otherwise terminated”, and rights of inspection (including premises, equipment and books pertaining to the cultivation on the leased premises).

Concern Statement 38085	Commenters suggested adaptive management strategies be considered under the action alternatives.
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NPS Response to Concern Statement 38085:

Adaptive management is used to improve managers’ understanding of ecological systems to better achieve management objectives and suggest changes in action to improve progress towards desired outcomes. It is a continuing iterative process where a problem is first assessed, potential management actions are designed and implemented, and those actions and resource responses are monitored over time. That data is then evaluated and actions are adjusted if necessary to better achieve desired management outcomes (Williams, Szaro, and Shapiro 2009).

Here, these sorts of adjustments would not meet the intended purpose of the action alternatives. Adjusting the operation of the oyster farm based on the results of monitoring would likely eliminate the certainty needed by DBOC to manage its business. Therefore, this EIS does not describe an adaptive approach to managing Drakes Estero should a new 10-year SUP be issued to DBOC. However, additional baseline surveys and monitoring are proposed to further increase understanding of the natural ecological processes within Drakes Estero, as described under “Elements Common to All Action Alternatives.”

AL6100 - Alternative B

Concern Statement 35993	A commenter requested additional information about DBOC’s proposed cultivation method, location, production numbers, and harvest/planting/maintenance activities of purple-hinged rock scallops.
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NPS Response to Concern Statement 35993:

Since the release of the Draft EIS, DBOC noted that it plans to use floating racks (where available), floating trays, and lantern nets to raise purple-hinged rock scallops. None of this infrastructure is present in Area 2 where purple-hinged rock scallops are currently permitted. This information has been added to the Final EIS; therefore, the EIS discusses all information available to the NPS on DBOC’s proposed cultivation method, location, production numbers, and harvest/planting/maintenance activities of purple-hinged rock scallops. The most detailed description of this is provided under alternative D. Under alternative D, purple-hinged rock scallops would be permitted for cultivation in Area 1 of the permit area (pages 138-143).

Concern Statement 38167	A commenter requested that the replacement of the conveyor system included in alternative D also be included in alternative B.
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NPS Response to Concern Statement 38167:

The replacement of the conveyor system as presented under the emergency request in March 2011 was included in alternatives B, C, and D of the Draft EIS, and is included in the Final EIS. See “Elements Common to All Action Alternatives” on page 125 of chapter 2.

AL6300 - Alternative D

Concern Statement 35997	<p>Commenters suggested new elements of alternative D or requested additional detail on the actions that would take place under alternative D, including the following:</p> <ul style="list-style-type: none"> -process by which additional review and authorization by NPS would take place -estimate of increase in boat trips
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NPS Response to Concern Statement 35997:

As described in the EIS, the two development proposals submitted by DBOC are evaluated at the conceptual level in this EIS. Additional planning, design, environmental compliance (including NEPA), and approval would be required prior to proceeding with construction of proposed new facilities. NPS would evaluate future requests from DBOC for consistency with the intent of this alternative, which is to allow for expanded operations within the scope of the conceptual proposal; approval/compliance for future development would be through a tiered planning process.

The estimate provided in the Final EIS is based on the information provided by DBOC during the February 16, 2011 site visit and in a letter to the NPS on June 5, 2012. In their December 9, 2011 comment letter on the Draft EIS, DBOC stated “it is very clear that limiting DBOC to two boats and barges with a combined use of 8 hours a day would cripple DBOC’s operations by limiting boat use to a fraction of the current use.” In the June 5, 2012 letter, DBOC noted that there are a number of variable demands which affect how much they must be on the water, including tides, weather, day length, planting season, high demand occasions, etc. DBOC did provide that the current level of operation is now three boats, not two as reported to VHB and presented in the Draft EIS. The description of DBOC boat use has been revised accordingly. Specific to alternative D, DBOC notes in their June 5, 2012 letter that “higher production levels may not require more boat trips.” This is noted in the Final EIS; however, because no assurance can be made that boat trips would not increase, the assumption remains such an increase is a possibility. This possibility remains qualitative based on available information.

AL7100 - Alternatives: Dismissed - Open Shellfish Operations to Competitive Bid

Concern Statement 35999	The EIS should consider opening shellfish operations to competitive bid.
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NPS Response to Concern Statement 35999:

Opening shellfish operations to competitive bid would not be consistent with section 124. See pages 146-147 of the Final EIS for the full justification on why opening shellfish operations to competitive bid was considered but dismissed from in-depth analysis.

AL7200 - Alternatives: Dismissed - Relocate DBOC

Concern Statement 36000	The EIS should consider relocating DBOC outside the Seashore or elsewhere within the Seashore.
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NPS Response to Concern Statement 36000:

Relocation of DBOC is not consistent with section 124. See page 147 of the Final EIS for the full justification on why relocating DBOC outside the Seashore or elsewhere within the Seashore was considered but dismissed from in-depth analysis.

AL7300 - Alternatives: Dismissed - Alter SUP Term

Concern Statement 36001	The EIS should consider issuing a new SUP for a period of more or less than 10 years.
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NPS Response to Concern Statement 36001:

Altering the SUP term is not consistent with section 124. See pages 147-148 of the Final EIS for the full justification on why issuing a new SUP for a period of more or less than 10 years was considered but dismissed from in-depth analysis.

AL7400 - Alternatives: Dismissed - Issue a Renewable SUP

Concern Statement 36002	The EIS should consider issuing a renewable SUP.
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NPS Response to Concern Statement 36002:

These comments express the view that a provision in the existing SUP/RUO allows the NPS to issue a “renewable” SUP to DBOC. The provision most often cited by commenters as allowing for a renewable SUP is Paragraph 11 of the RUO. The response to Concern Statement 36942 explains why Paragraph 11 of the RUO does not provide a basis for issuing a renewable SUP to DBOC. In addition, the NPS cannot issue a “renewable” SUP under section 124. Section 124 expressly limits the Secretary’s discretion to issuing a single permit of one 10-year term.

AL7600 - Alternatives: Dismissed - Incorporate Phase Out Requirements in New SUP

Concern Statement 36003	Commenters requested that incorporating phase out requirements in the new SUP be considered, if issued.
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NPS Response to Concern Statement 36003:

Incorporation of phase out requirements is not consistent with section 124. See pages 148-149 of the Final EIS for the full justification on why incorporating phase out requirements in the new SUP was considered but dismissed from in-depth analysis.

AL7700 - Alternatives: Dismissed - Comprehensive Restoration of the Developed Onshore Area

Concern Statement 36004	The EIS should consider developing a comprehensive restoration plan for both the onshore and offshore portions of the project area.
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NPS Response to Concern Statement 36004:

Separate actions related to comprehensive restoration of the developed onshore area are beyond the scope of this EIS, which analyzes the decision to be made under section 124. See page 149 of the Final EIS for the full justification on why comprehensive restoration of the developed onshore area was considered but dismissed from in-depth analysis.

AL8000 - Alternatives: New Elements or Alternatives

Concern Statement 36005	<p>Commenters suggested new alternative elements, including the following:</p> <ul style="list-style-type: none"> -designate a different oversight agency -modify the wilderness boundary -remove all restrictions on DBOC operations -public clean up of debris -designate a no wake zone -ensure that there is a bond to pay for environmental damage -require non-motorized harvest of oysters -make commercial use subject to the payment of royalties -remove asphalt -remove second leach field -addition of a visitor center at DBOC and remodeling of existing buildings
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NPS Response to Concern Statement 36005:

New alternative elements proposed during the public review were addressed as follows:

Designate a different oversight agency. Congress established Point Reyes National Seashore as a unit of the National Park System. The park’s enabling legislation directs that the lands and waters within the park shall be administered by the National Park Service according to the enabling legislation and the National Park Service Organic Act. The NPS does not have authority to delegate the management of park lands and resources to other agencies.

Modify the wilderness boundary. The boundary of the potential wilderness area encompassing Drakes Estero was based on a 1976 map prepared by the National Park Service and submitted to Congress during Congressional deliberations on the Point Reyes wilderness bill. In PL 94-544 and 94-567, Congress expressly adopted the boundaries depicted on the 1976 map as the official wilderness boundaries. Congress allowed for technical or typographical corrections to the map to be made administratively. However, any material modifications to the boundaries, such as removal of the Estero from potential wilderness, would have to be made through new legislation. The NPS therefore did not

consider moving the potential wilderness boundary in the action alternatives. NPS managers are obligated, through the *NPS Management Policies 2006* to manage potential wilderness as wilderness, with the exception of the nonconforming uses.

If the Secretary allows DBOC to operate for an additional ten years, section 124 directs that DBOC operate pursuant to a SUP having the same terms and conditions as DBOC's existing authorizations.

In addition, the terms and conditions in DBOC's existing authorizations were established, in part, to minimize the impacts of this commercial operation on the resources within Point Reyes National Seashore. These restrictions are based on relevant state and federal laws and on NPS policies. Removal of these restrictions would be inconsistent with the objectives of this EIS which include managing natural and cultural resources to support their protection and preservation, managing wilderness and potential wilderness to preserve wilderness character, and providing for visitor enjoyment of park resources.

Public clean up of debris. Debris cleanup is a requirement of DBOC pursuant to sections 3.2.2 and 3.2.3 of the 2007 Cease and Desist Order with the California Coastal Commission, and section 7(b) of the 2008 SUP, and is the responsibility of DBOC.

Designate a no wake zone. The current SUP under section 4(b)(vii) requires that "Boats shall be operated at low speed" to access the paralytic shellfish poison sentinel station. NPS can impose speed restrictions on the permittee without designating a no wake zone. The Final EIS identifies that for access to any CDPH monitoring stations outside of any permit area, the access to those areas be conducted at flat wake speed (36 CFR 1.4) and within one hour of the predicted high tide. The SUP would establish a specific section that documents and accommodates access to established water quality stations for the purpose of California Department of Public Health pathogen and paralytic shellfish poisoning monitoring activities. Flat wake speed means the minimum required speed to leave a flat wave disturbance close astern a moving vessel yet maintain steerageway, but in no case in excess of 5 statute miles per hour.

Ensure that there is a bond to pay for environmental damage. The SUP sets forth the requirements for DBOC with regard to its liability for environmental contamination and other types of damage to park lands and resources. Under the SUP, DBOC is required to carry certain types of insurance that would be used to compensate the NPS for damage or injury to park resources. These include Comprehensive General Liability insurance and automobile insurance. In addition, DBOC has indemnified the NPS for any damage that arises from its operations. The SUP also requires DBOC to remove its personal property from the park at the conclusion of the permit and undertake restoration of the area. Finally, DBOC is required to maintain an escrow account to fund removal of aquaculture infrastructure in the Estero. The NPS will work with CDFG to ensure that this account is accessible to the permitter and can be used upon termination of DBOC's SUP.

Require non-motorized harvest of oysters. This harvest method is not feasible. The beds and racks require transit a great distance from the on-shore facilities. Wind, waves, and tidal flow affect access conditions and would limit the ability of DBOC staff to access these areas in a safe and timely manner. Imposing this requirement on DBOC would place an unacceptable constraint on the ability of DBOC to feasibly conduct commercial shellfish operations.

Make commercial use subject to the payment of royalties. Royalties and permit fees are examples of mechanisms used to compensate a land owner for the use of land or the extraction of natural resources from the land of another. Section 124 requires "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." In enacting section 124, Congress chose "fair market value" as the mechanism to compensate the National Park Service for DBOC's use park lands and waters should the Secretary grant DBOC a new permit. Section 124 does not allow the NPS to collect royalties.

Remove asphalt/remove second leach field. As defined in section 23 of the SUP, the “Permittee shall also return the premises to as good order and condition (subject to wear and tear and damage that is not caused directly or indirectly by Permittee) as that existing upon [April 22, 2008]” (NPS 2008b). Restoration efforts by the NPS are beyond the stated purpose of the proposed project, which is to evaluate whether the Secretary should exercise the discretion granted under section 124 to issue a 10-year permit to DBOC. Plans for comprehensive site restoration would be developed in the future and subject to additional NEPA compliance. Under the No Action alternative, restoration would take place sooner than under the action alternatives.

New visitor center and remodeling of existing buildings. The NPS currently operates three visitor centers within the Seashore, including one at Drakes Beach. A visitor center at this site is not consistent with park planning efforts. Under the action alternatives, DBOC could remodel the existing buildings if requested to and approved by the NPS. Following expiration of the SUP (whether this takes place in 2012 or 2022), the potential for use and remodeling of the NPS-owned buildings at the site could be evaluated.

Concern Statement 39632	Commenters requested that the EIS provide additional detail on existing monitoring/management of invasive species, including evidence of effectiveness.
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NPS Response to Concern Statement 39632:

“Monitoring and managing invasive species” has been removed from the EIS as a cumulative action. Monitoring and baseline surveys related to Drakes Estero are now described in the “Elements Common to All Action Alternatives” section of chapter 2. Common to all alternatives, baseline surveys and monitoring of resources would occur to assist with identifying the extent and distribution of target resources including benthic and infaunal communities (tunicates, manila clams, etc.), and eelgrass. These surveys and results of monitoring would provide site-specific data and further increase understanding of the natural ecological processes within Drakes Estero, thus improving long-term management of the Estero.

See response to Concern ID 35975 for more information regarding special permit conditions that serve to reduce the intensity of potential impacts on particular resources.

AL8190 - New Alternative: Collaborative Management

Concern Statement 36007	Members of the public expressed support for the Collaborative Management alternative.
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NPS Response to Concern Statement 36007:

The collaborative management alternative includes the rehabilitation and new construction elements of alternative D, as proposed in the Final EIS, as well as the following items:

- option for a renewable permit/permit extension
- operation under a CDFG lease
- fair market value that takes into account the value of interpretive services provided by DBOC and the rehabilitation and new construction proposed
- a collaborative approach to develop interpretive programs and scientific research projects

The NPS did not include the “collaborative management” alternative as one of the alternatives in the EIS because its key elements lack legal foundation. As explained in the responses to Concern Statements 36002

and 34962, the NPS does not have the legal authority to issue a renewable SUP to DBOC. A renewable SUP is inconsistent with section 124 and is therefore inconsistent with the purpose and need of this EIS.

Response to concern ID 36946 addresses the issue of the leasing authority of the California Fish and Game Commission. CDFG would retain jurisdiction to regulate certain aspects of DBOC’s operation such as the importation of brood stock. The action alternatives include provisions for this type of CDFG oversight.

The Department of the Interior Office of Valuation Services contracted for an appraisal to determine the fair market value of the project area. The appraisal was conducted in accordance with federal appraisal standards and was used to establish the fair market value of the new permit.

Visitor services must be consistent, to the highest practicable degree, with the preservation and conservation of the resources and values of the Seashore (16 U.S.C. sections 5951(b), 5952; 36 CFR section 51.3) (definition of “visitor service”). The primary focus of DBOC is the commercial operation for sale of shellfish to restaurants and the wholesale shellfish market outside the Seashore. These are not commercial services being offered to the visiting public to further the public's use and enjoyment of the Seashore.

New construction would be the financial responsibility of DBOC.

All of the action alternatives presented in the EIS allow for a collaborative approach to develop interpretive programs and scientific research projects. None of the proposed elements would prohibit this approach from occurring if alternative B, C, or D is selected.

AL10000 - Alternatives: Preferred Alternative

Concern Statement 36642	Commenters requested that the NPS should clarify why no NPS preferred alternative was identified in the Draft EIS and what role the public comments will play in identification of the NPS preferred alternative.
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NPS Response to Concern Statement 36642:

The National Park Service did not identify a preferred alternative in the Draft EIS because the NPS wanted to encourage full and objective input from the public on all the alternatives presented in the Draft EIS (see page 154 of the Final EIS). NPS agrees with the commenter that public comments are not a vote. However, public comments can be very useful feedback to the agency regarding the scope of the plan, alternatives considered, and the adequacy of the impact analysis.

AL11000 - Alternatives: Environmentally Preferable Alternative

Concern Statement 36010	Commenters requested that the positive ecosystem services and provision of shellfish to local markets due to DBOC operations be taken into account when selecting the environmentally preferable alternative.
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NPS Response to Concern Statement 36010:

Pursuant to Department of the Interior NEPA regulations (43 CFR 46.30), the environmentally preferable alternative is the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. The environmentally preferable alternative is identified upon consideration of long-term environmental impacts and short-term impacts in evaluating what is the best protection of these resources.

The NPS acknowledges the potential beneficial impacts DBOC activities have by filtering water. This is noted in the Final EIS on pages 431, 436, and 438. These potential beneficial effects of the action alternatives do not outweigh the benefits associated with alternative A, which are summarized on page 153-154 and which led to its designation as the environmentally preferable alternative. The NPS believes that alternative A, expiration of the existing RUO and SUP and subsequent conversion to wilderness, would cause the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources in the short-and long-term.

AL12000 - Alternatives: General Comments

Concern Statement 35958	Commenters requested that the proposed action be defined in the EIS.
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NPS Response to Concern Statement 35958:

The DOI NEPA regulations define the term “proposed action” as “the bureau activity under consideration,” which “includes the bureau’s exercise of discretion over a non-Federal entity’s planned activity that falls under a Federal agency’s authority to issue permits.” (43 CFR 46.30). For purposes of the DOI NEPA regulations, the proposed action for this EIS is the Secretary’s decision whether to issue a permit under section 124, as discussed in the Purpose and Need section. Text has been added to chapter 1 further clarifying that the Secretary’s decision under section 124 is the NPS’s “proposed action” as defined in 43 CFR 46.30.

The DOI NEPA regulations further note that a bureau’s purpose and need (and therefore its “proposed action”) may differ from the applicant’s proposal:

When a bureau is asked to approve an application or permit, the bureau should consider the needs and goals of the parties involved in the application or permit as well as the public interest. The needs and goals of the parties involved in the application or permit may be described as background information. However, this description must not be confused with the bureau's purpose and need for action. It is the bureau's purpose and need for action that will determine the range of alternatives and provide a basis for the selection of an alternative in a decision (43 CFR 46.420(a)(2)).

While “DBOC’s proposed action” would presumably be to grant a permit under the terms it requested, that is not the “proposed action” as defined by the DOI regulations, nor is it the sole basis of the NPS purpose and need for action. Key elements of DBOC’s proposal conflict with section 124 and the NPS’s legal jurisdiction over DBOC’s operation. For example, DBOC’s proposed action included a request for a renewable permit that applied only to the onshore portions of its operation. As explained in the responses to Concern Statements 36002 and 34962, the NPS does not have authority to issue a renewable SUP to DBOC. Section 124 only authorizes one, ten-year permit. Response to concern ID 36946 explains the basis for NPS jurisdiction over the off-shore portions of DBOC’s operation. Inclusion of such elements in the purpose and need for action would be fundamentally inconsistent with the NPS’s authority over DBOC’s operation and the broader public interest. The NPS’s declination to identify DBOC’s proposal as the proposed action for this EIS is a proper exercise of NPS’s authority over DBOC’s planned activity.

See also response to concern ID 35894.

Concern Statement 36676	One commenter suggested that NPS has not considered a reasonable range of alternatives because of the similarity in impacts between the three action alternatives.
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NPS Response to Concern Statement 36676:

As noted in the EIS, section 124 provides the Secretary with authority “notwithstanding any other provision of law.” However, the Department has determined that it is helpful to generally follow the procedures of NEPA.

NEPA requires that agencies consider a reasonable range of alternatives in an EIS. The range of alternatives that must be considered is guided by the agency’s purpose and need statement. The purpose and need for this EIS is to assist the Secretary in deciding whether to exercise his authority under section 124. Section 124 limits the Secretary’s options for issuing a new permit to DBOC. A new permit under section 124 must contain the same terms and conditions as DBOC’s existing authorizations (which are the 2008 SUP and the RUO). Section 124 also authorizes only one, ten-year permit. These statutory requirements limit the alternative scenarios that can be considered under NEPA.

The EIS examines four alternatives, described in “Chapter 2: Alternatives,” which include both broad-scale and site-specific elements. The alternatives considered in the EIS include the following: alternative B considers current DBOC operations (as of 2010); alternative C considers most DBOC operations and facilities present in 2008 at the time the current SUP was signed; and alternative D considers the expansion of operations and facilities consistent with those aspects of DBOC’s requests that met legal requirements and were consistent with section 124. There are a number of variations among alternatives, including the types of shellfish that can be cultivated, the location of shellfish cultivation, the number of acres authorized for cultivation, and the amount of shellfish that may be cultivated. The variations among the action alternatives fully satisfy NPS’s obligation to consider a reasonable range of alternatives based on the NPS’s purpose and need for this EIS.

Please see Concern Statement 36002 and 36942 for additional discussion related to Issuance of a Renewable SUP and Concern Statement 36007 for more discussion related to the collaborative management alternative.

Concern Statement 36679	A commenter requested clarification regarding whether or not removal of the DBOC property and equipment at the termination of the SUP term would be authorized by the new SUP or would be subject to additional review and approval by NPS.
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NPS Response to Concern Statement 36679:

The existing RUO and SUP include specific language governing the removal of personal property and equipment from the project area. As described in the Final EIS, alternative A includes removal of infrastructure from the Estero as well as unsafe structures from the onshore site. Under the action alternatives, any new infrastructure installed by DBOC under a new permit issued by the NPS would be considered personal property of the operator and required to be removed under the new SUP. NPS would oversee DBOC’s activities to ensure that the activities comply with permit terms and to ensure protection of park resources.

AL12200 - Alternatives: Mitigation

Concern Statement 35975	<p>Commenters requested that mitigation measures be clearly identified and/or justified, including the following:</p> <ul style="list-style-type: none"> -use of electric motors -noise reduction methods -harbor seal protection area and distance from hauled-out seals -methods by which dredging disturbance can be minimized -debris cleanup/waste management -invasive species management
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NPS Response to Concern Statement 35975:

The 2008 SUP includes a number of conditions that serve to reduce the intensity of potential impacts on particular resources. Pursuant to section 124, which provides the Secretary the discretionary authority to issue a SUP with the same terms and conditions as the existing authorizations, special permit conditions from sections 4 and 6 of the 2008 SUP were included as elements common to all action alternatives. To provide additional clarity in the Final EIS, these special permit terms have been consolidated into one list under the “Elements Common to All Action Alternatives.” Impacts were described and analyzed assuming compliance with these measures under all action alternatives in chapter 4.

Per section 4(b) of the 2008 SUP, “Based upon the findings of an independent science review and/or NEPA compliance, Permittee reserves its right to modify the provisions of this Article 4. Permittee further reserves its right to incorporate new mitigation provisions based upon the findings of an independent science review.” Measures incorporated into the EIS based on public and agency comments during the NEPA process include the following:

- Clearly delineate boat access routes for use under action alternatives
- Delineate seasonal and permanent closure areas with GPS and visual demarcation
- Devise and implement methods for tracking all oyster-related watercraft in the estuary using GPS technology (MMC 2011b)
- Mark aquaculture boats for easy identification (MMC 2011b)
- Removal of European flat oyster as a potential species for cultivation (DBOC 2012b)
- Prohibition of stake culture methods

As a result of NAS recommendations, Manila clams have been removed as a species authorized for cultivation under alternative C to address concerns about the establishment of this invasive species in Drakes Estero. DBOC would be responsible for implementing harvest practices intended to minimize fragmentation and loss of *Didemnum* from oysters including modification of current harvest and distribution practices to ensure that oyster strings or bags hosting *Didemnum* are managed in a way that does not distribute *Didemnum* to other areas of Drakes Estero. Another mitigation measure identified within the Final EIS is prohibition of stake culture methods from all of the action alternatives. In addition, under alternative D, NPS would work with DBOC to ensure that onshore sound-generating equipment would be housed within new buildings constructed or otherwise enclosed to the extent practicable.

Other measures were suggested during the review of the Draft EIS, but were not incorporated into the Final EIS due to the uncertain nature of their technical or economic feasibility. Examples of these suggestions include: use of electric boat motors or paddleboats, changing culture techniques, new biodegradable materials or plastics that would not leach into water for rack construction, the use of desiccation and mild acid dips to limit the spread of noxious species, and increasing the buffer distance that shellfish operation workers would be required to maintain from harbor seals. However, if further

investigation into these potential mitigation measures indicates that they are in fact feasible, additional mitigation measures may be included as permit conditions in the future.

In addition, section 2(b) of the 2008 SUP establishes that DBOC is responsible for obtaining all necessary permits, approvals, or other authorizations relating to use and occupancy of the premises. Additional mitigations/permit conditions may be required by other agencies in order to obtain required local, state and federal permits.

Concern Statement 36912	A commenter suggested that mitigation measures (as identified by the commenter) be clearly justified and based on sound science. Specifically, the commenter was concerned about changes to paralytic shellfish poison sampling and the description of DBOC boat traffic.
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NPS Response to Concern Statement 36912:

The commenter interpreted the description of existing operations related to boats on the water, duration of operations, and access as mitigations for potential impacts without bases for including them. The Final EIS, pages 85-111 describe the existing operations, production, and facilities associated with the Drakes Bay Oyster Company. The estimate provided in the Final EIS is based on the information provided by DBOC during the February 16, 2011 site visit and in their letters to the NPS on December 9, 2011 and June 5, 2012. In their December 9, 2011 comment letter on the Draft EIS, DBOC stated “it is very clear that limiting DBOC to two boats and barges with a combined use of 8 hours a day would cripple DBOCs operations by limiting boat use to a fraction of the current use.” In the June 5, 2012 letter, DBOC refined the description of their boat use noting that there are a number of variable demands which affect how much they must be on the water, including tides, weather, day length, planting season, high demand occasions, etc. DBOC did provide that the current level of operation is now three boats, not two as presented in the Draft EIS. The description of DBOC boat use has been revised accordingly. Specific to alternative D, DBOC notes in their June 5, 2012 letter that “higher production levels may not require more boat trips.” This is noted in the Final EIS; however, because no assurance can be made that boat trips would not increase, such an increase remains as an assumption. This possibility remains qualitative based on available information. These estimates are an assumption of the level of effort required and are not meant to be mitigation measures or limits on operations.

Other commenter concerns related to the water quality sampling requirements associated with all shellfish producing facilities. The Draft EIS stated under the section “Elements Common to All Action Alternatives,” that the proposed boundary adjustment would move the boundary away from the main channel. NPS and CDPH would work to identify an appropriate site or sample timing (high tide) for paralytic shellfish poisoning sampling that meets health and safety requirements. The SUP would establish a specific section that documents and accommodates access to established water quality stations for the purpose of CDPH pathogen and paralytic shellfish poisoning monitoring activities..

The NPS and CDPH have reviewed sampling protocols, intent and requirements. The current SUP includes language for access to the sentinel PSP station in the main channel. Access to that station shall be made at flat wake speed within 1 hour of predicted high tide for the area. Should the second required station be outside of the operational permit area, the SUP would be modified to incorporate access to the station as appropriate. With regard to water quality monitoring stations for pathogens, CDPH generally samples sites within the permitted growing areas. No active water quality stations are maintained outside of the existing permit area. As described on page 124 of the Final EIS, it would continue to be the responsibility of DBOC, as the operator, to sample the primary stations, while CDPH maintains the secondary stations (with access provided by DBOC boats). NPS will continue to coordinate with CDPH regarding access to stations 17, 18, and 19, with respect to the established seasonal closure (March 1 - June 30). DBOC and CDPH must notify the NPS of sampling events 24 hours prior to the event. CDPH would continue to review results with the NPS annually and any changes to the monitoring program

would be proposed to the NPS for review consistent with the SUP. Exceptions for access to established water quality and PSP stations required by the California Department of Health Services will be identified as part of any SUP.

AE1000 - Affected Environment: General Comments

<p>Concern Statement 36011</p>	<p>A commenter requested that existing conditions be described as currently affected by existing shellfish aquaculture, not a pristine condition, when describing the affected environment.</p>
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NPS Response to Concern Statement 36011:

The existing conditions are described as currently affected by the existing commercial shellfish operations. Each section under the “Affected Environment” section takes the presence and activities of DBOC into account.

AE2000 - Affected Environment: Drakes Estero Setting and Processes

<p>Concern Statement 37081</p>	<p>A commenter requested that use of specific references in preparing the “Drakes Estero Setting and Processes” section be reviewed and/or revised.</p>
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NPS Response to Concern Statement 37081:

Over 850 additional items were suggested during preparation of the Final EIS. References and revisions that were not applicable (i.e., not within Drakes Estero or for research conducted in a dissimilar setting) or did not meet the criteria described under “References Used for Impact Analysis” on page 27-28 of the Final EIS were not used in preparing the Final EIS. Over 150 references were closely reviewed, considered for use, and are incorporated where relevant, including the “Drakes Estero Setting and Process” section.

<p>Concern Statement 37082</p>	<p>A commenter requested additional detail regarding the following items in the description of Drakes Estero setting and processes: -invasive species -native clams</p>
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NPS Response to Concern Statement 37082:

Data on ecological functions of the native clam population are lacking for Drakes Estero. The best *in situ* data on native bivalves in Drakes Estero comes from unpublished master’s theses, particularly that of Press (2005). That reference cites nine species of bivalves, all of which are already listed in chapter 3 under the heading “Bivalves” (pages 227-229). The discussion on nonnative invasive species provided in the EIS is based on best available information on this topic; nonnative invasive species are already discussed under the heading “Nonnative, Invasive, and Commercial Shellfish Species” in the “Wildlife: Benthic Fauna” section.

IA1000 - Impact Analysis: General Comments

Concern Statement 36028	Commenters questioned why the EIS does not match the National Academy of Sciences National Research Council (NAS) finding of no major adverse impact.
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NPS Response to Concern Statement 36028:

Pages 27-29 of the Final EIS address this concern. In general, the 2009 NAS report does not provide a definition or detection threshold for what a “major” adverse ecological effect would be, nor does the report indicate that the NAS use of an impact qualifier (e.g., “major”) is consistent with NEPA standards. In addition, the Final EIS does not identify a major adverse impact for any of the resource topics that were also reviewed by the 2009 NAS panel, which did not include some impact topics addressed in the Final EIS such as soundscapes or wilderness. It should also be noted that the 2009 NAS discussion is based on 2008 and 2009 operational levels.

Concern Statement 36029	Commenters requested additional detail on impacts of the alternatives, including: -impacts of plastic debris -impacts of invasive species
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NPS Response to Concern Statement 36029:

Marine Debris. The Final EIS was reviewed to ensure that marine debris was discussed under all relevant impact topics. As a result, text regarding the introduction of plastic debris from the shellfish operations into the marine ecosystem was added to relevant sections of the EIS (i.e., wetlands and other waters of the U.S.; wildlife and wildlife habitat, including fish, harbor seals, and birds; special-status species; water quality; wilderness; and visitor experience). There are no specific data available on impacts of marine debris in Drakes Estero that would satisfy the requirements for primary references as specified in the chapter 1 section “References Used For Impact Analysis”; however, some research in other types of marine settings have studied plastic contaminants in the marine environment. These have been incorporated into the text where relevant. The modifications to the Final EIS also acknowledge the history of plastic debris in Drakes Estero and reiterate that debris cleanup is a requirement of sections 3.2.2 and 3.2.3 of the 2007 Cease and Desist Consent Order and section 7(b) of the 2008 SUP and is the responsibility of DBOC. Additional detail regarding the responsibility of DBOC for removal of plastic debris is provided in chapter 2 of the EIS.

Invasive Species. The California Aquatic Invasive Species Management Plan (January 2008) issued by the California Resources Agency does not apply to actions undertaken by the National Park Service, although it may guide CDFG in its regulatory oversight of aquaculture activities. CDFG would regulate DBOC’s operation with respect to the stocking of aquatic organisms, brood stock acquisition, disease control (including limitations to transfer of organisms between water bodies), and the importation of aquatic organisms into the state. Other policies regarding invasive species and marine debris that do apply to the NPS and/or DBOC have been included in the Related Laws, Policies and Plans section of the EIS. These include Executive Order 13112 on Invasive Species; the Clean Water Act, which regulates the discharge of pollutants into navigable waters; and the California Fish and Game Code, which regulates the importation of exotic species into the state.

The implications of continued DBOC operations with respect to exotic species have been discussed extensively in chapter 4. The additional references suggested by commenters do not satisfy the requirements for primary references as specified in chapter 1: References Used For Impact Analysis.

Concern Statement 36030	Commenters stated that the EIS overstates the beneficial ecological impacts of removing commercial shellfish from Drakes Estero and/or underestimates the ecological benefits of retaining the commercial shellfish.
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NPS Response to Concern Statement 36030:

The EIS recognizes the benefits provided by filter feeding shellfish to the aquatic environment. in detail in “Chapter 3: Affected Environment.” Certain references suggested in these comments are already cited in the EIS. Additional text on positive ecosystem benefits of filter feeding bivalves has been provided under “Chapter 3: Affected Environment - Biogeochemical Cycling,” and also in “Chapter 4: Environmental Consequences” in the impact topics of eelgrass and water quality.

The absence of this benefit is mentioned in the water quality section of chapter 4, under alternative A. However, quantifying any changed environmental conditions across the entire estero if and when the shellfish operations cease is not possible. The EIS makes no statements or assumptions about whole-ecosystem effects of cultured species on resources. The impacts of commercial shellfish operations on natural resources in Drakes Estero are evaluated on a localized scale. Impacts to resources in Drakes Estero are considered in accordance with the intensity definitions as defined in the EIS, as well as relevant policy.

Concern Statement 36031	Commenters questioned the role of DBOC’s activities in the disturbance of sediment in Drakes Estero.
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NPS Response to Concern Statement 36031:

The Final EIS specifies the benefits oysters provide to water quality as filter feeders in the context of an analysis of alternatives. Similarly, the human induced disturbances to water quality caused by all activities (boating, managing oyster bags, etc.) are identified and analyzed for each alternative, regardless how small, so as to differentiate impacts between alternatives. NPS recognizes that many of disturbances caused by these types of actions (such as rotating bags) are short lived, very localized, and to some may seem trivial. Nonetheless, these types of impacts should be analyzed in the context of the intensity definitions as defined in the EIS, as well as relevant policy.

Specific references with respect to erosion underneath racks has been removed from the text as this line of discussion was almost solely based on the conclusions of Harbin-Ireland (2004), which is an unpublished thesis. Further, the specific point of erosion under racks is not substantiated by other studies (e.g., Everett et al. 1995). Given the lack of consistency in the available scientific literature, the short section on erosion under racks was removed from pages 263, 267, 268, 270, and 272 of chapter 4 in the “Impacts on Eelgrass” section.

Concern Statement 36032	Commenters state that the EIS understates the adverse impacts caused by DBOC because the EIS assumes compliance with permit conditions and requirements.
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NPS Response to Concern Statement 36032:

NPS recognizes compliance issues (such as DBOC’s ongoing operation under Cease and Desist Consent Orders from the California Coastal Commission) in chapters 1 and 2; however, the analysis in the Final EIS assumes that future DBOC operations would meet compliance requirements. As described in the NPS Operations impact analysis (pages 506-514 of the Final EIS), to effectively manage the SUP, the NPS would establish a staff position to coordinate Seashore oversight, management, and enforcement of the existing operations. This position also would be responsible for assisting with documentation of mitigation and monitoring efforts prescribed for all action alternatives. The creation of a staff position would help to ensure that DBOC operates within the terms and conditions of a new SUP.

Concern Statement 36862	A commenter stated that a Supplemental EIS is warranted.
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NPS Response to Concern Statement 36862:

The NPS does not believe a Supplemental EIS is warranted. The CEQ regulations implementing NEPA provide that agencies should prepare a supplemental EIS if (1) there are substantial changes in the proposed action or (2) there is significant new information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9).

The changes made to the alternatives based on public comment and the input received from reviews of the science presented in the Draft EIS do not warrant supplementation. As a result of the public comment and scientific reviews, some changes were made to the alternatives, including the inclusion of basic monitoring activities considered as part of the alternatives, rather than as a cumulative project, and the removal of the nonnative Manila clam cultivation from alternative C. In its letter of June 5, 2012, DBOC identified a few relatively minor corrections to the description of their operations that required minor updates to the alternative descriptions. DBOC corrected the number of boats used for DBOC operations; three boats are used instead of two. DBOC also included the type of cultivation method they may use for purple-hinged rock scallops. These minimal changes in the alternatives do not substantially change the impact analyses and conclusions. The Final EIS includes these modifications.

DBOC also identified its interest in concentrating the repair and replacement of racks in the first two years of any new 10 year SUP. As such, its proposal for repair/replacement of 50 racks in 2013 and 25 racks in 2014 has been included under all action alternatives in the Final EIS. These modifications do not require analysis in a supplemental EIS.

The NPS considered information and data submitted by the public during the comment period as well as the findings of independent, scientific reviews (see chapter 1 pages 28-34 for a description of these reviews and their findings). New data and information submitted during the public comment period included field-collected sound data and additional references suggested for use in the EIS. The NPS considered this information and incorporated it as appropriate. However, the use of this data did not lead to substantial changes in the alternatives, nor did it significantly change the impact analysis or conclusions in the EIS.

The independent science reviews, as described in chapter 1, provided feedback related to additional references for consideration in the EIS, improvements to impact analysis methodologies to define the data/information that is used for each impact topic as well as what is missing, and suggestions to improve the impact analyses for several impact topics, in particular socioeconomic resources and water quality. The consideration of the information obtained through these scientific reviews has improved the analysis in the EIS, but it has not led to substantial changes in the alternatives or the impact analyses and conclusions. As a result, the NPS does not believe that supplementation of the EIS is warranted.

Concern Statement 38630	A commenter requested that ecological modeling be used to predict impacts of removing commercial shellfish operations on water quality and the Drakes Estero ecosystem.
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NPS Response to Concern Statement 38630:

The impacts on water quality are analyzed using the characteristics of Drakes Estero described in the literature, any cited water quality studies from Drakes Estero itself or similar environments, and reasonable conclusions based on the science. Development of a circulation and ecological model for a complex system such as Drakes Estero would require extensive data collection and analysis, as well as a peer review process required for such a published document. The best available information indicates

that the water quality in Drakes Estero is relatively high with the commercial oyster operation present, and it is reasonable to assume (again, based on the geophysical condition of Drakes Estero as a shallow lagoon that exchanges a volume equal to that contained in Drakes Estero as described by the NAS [2009] review) the water quality would remain high if the oysters are removed. For a more detailed discussion of water quality impacts, see pages 423-441 of the Final EIS.

IA1100 – Impact Analysis: Shell Donation

Concern Statement 36061	Commenters requested that the EIS analysis consider the value of DBOC’s shell donation to habitat restoration projects.
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NPS Response to Concern Statement 36061:

DBOC has donated or sold oyster shells to support a number of habitat enhancement and restoration projects in the San Francisco Bay Area, including:

- San Francisco Bay Native Oyster Restoration Project
- San Francisco Bay Bird Observatory (SFBBO) Snowy Plover Habitat Enhancement Project
- Department Fish and Game's (DFG) Napa Plant Site Restoration Project (located at the Green Island Unit, former Cargill Solar Salt Plant)

The shell is used as a new substrate used to enhance nesting habitat or create submerged hard substrate for oyster restoration projects. The donation of shell to these projects is not a requirement of the current or any new SUP. While donated shell has been used by, and is considered a value to some regional ecological restoration efforts, there is no evidence that restoration efforts would be discontinued in the absence of shell from DBOC. Under the action alternatives, it is assumed that shell donation will continue to projects at some level. Under the no action alternative this site would no longer be a source of shell for potential restoration or enhancement projects.

IA2000 - Impact Analysis: General Methodology for Assessing Impacts

Concern Statement 36049	A commenter suggested that the EIS should provide statistical significance levels for all data used.
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NPS Response to Concern Statement 36049:

CEQ regulations require that environmental information made available to public officials and citizens be of high quality (40 CFR 1500.1[b]). The NPS used best available information to come to conclusions regarding impacts to park resources. This information includes a large number of peer reviewed articles. The scientific analysis of the Draft EIS has also been the subject of several peer reviews, as described on pages 28-34 of chapter 1. Background regarding the statistical significance of data cited in the EIS can be found in each study (if applicable), all of which are referenced in the Bibliography at the end of the document.

Concern Statement 36050	A commenter questioned the methodology for categorizing short- and long-term impacts and recommended identifying whether adverse impacts are irreversible.
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NPS Response to Concern Statement 36050:

In order to provide clear and easily identifiable impacts, short-term impacts were defined as those that “last a relatively brief time following an action and/or are temporary in nature. Short-term impacts typically are less than 1 year in duration” (page 296). Long-term impacts were defined as those that “last a relatively long time following an action and/or may be permanent. Long-term impacts typically 1 year or longer in duration” (page 296). As defined in chapter 4, a long-term impact may or may not be permanent (i.e., irreversible). Impacts on eelgrass are described appropriately in the “Impacts on Eelgrass” section, based on these parameters. With respect to the relative permanence of eelgrass scars, one overall effect of scarring will be the long-term impact resulting from continued DBOC operations under alternatives B, C, and D (i.e., although older scars may regrow, new scars would form as a result of ongoing operations). As written on page 515 of the Final EIS, the only potential irreversible loss of resources is due to the continued risk of nonnative species, especially the Manila clam, becoming established within Drakes Estero and the risk of continued spread of *Didemnum*. If these nonnative species cannot be controlled, it would represent an irreversible loss of an otherwise natural ecosystem within Drakes Estero.

Concern Statement 36051

Commenters suggested that the EIS should use concrete data to demonstrate impacts and avoid speculating about causal relationships and potential impacts.

NPS Response to Concern Statement 36051:

The method of analysis and presentation in this EIS is consistent with the requirements of NEPA.

The impact analysis presented in the EIS is based on the best available science, as indicated on pages 27-28 of the Final EIS in the “References Used for Impact Analysis” section. The use of the word “potential” throughout the impact analysis does not indicate speculation of impacts. Documents that provide an impact analysis for compliance with NEPA are typically written in the “conditional” voice because no decision has been made at the time of preparation and the actions being described have not been implemented. Impacts are identified as “potential” to indicate this conditional nature.

Concern Statement 36052

A commenter suggested that the EIS use a net impact analysis approach.

NPS Response to Concern Statement 36052:

CEQ regulations require that an agency consider and disclose impacts that may be both beneficial and adverse (43 CFR 1508.27). There is no direction to balance, or average beneficial and adverse impacts. In the EIS, the NPS has disclosed both beneficial and adverse impacts where they are expected, and described those impacts. The method of analysis and presentation in this EIS is consistent with the requirements of NEPA.

Concern Statement 36866

A commenter suggested that impacts be considered at a variety of scales.

NPS Response to Concern Statement 36866:

In general, the impacts of commercial shellfish operations on natural resources in Drakes Estero are evaluated on a localized scale. As described on pages 295-296 of the Final EIS, the geographic area (or area of analysis) for the EIS includes DBOC onshore and offshore facilities and operations in and adjacent to Drakes Estero (see figures 1-3 and 1-4 of the Final EIS). The area of analysis is extended for visitor experience and

recreation, socioeconomic resources, and NPS operations. The scale used for NPS operations and visitor experience and recreation is the Seashore boundary. The area of analysis for socioeconomic resources is discussed further under that impact topic in this chapter. The EIS makes no statements or assumptions about whole-ecosystem effects of cultured species on resources. Impacts to resources in Drakes Estero are considered in accordance with the intensity definitions as defined in the EIS, as well as relevant policy. From a regulatory standpoint, the scale at which impacts to resources are assessed is localized. Further, it is important to note that, from a regulatory perspective, any documented direct impact on eelgrass would likely require mitigation irrespective of how much eelgrass is already present.

IA2200 - Impact Methodology: Baseline for Analysis

Concern Statement 36044	Commenters stated that the current conditions should be the baseline against which the impacts of all alternatives are assessed.
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NPS Response to Concern Statement 36044:

DOI NEPA regulations (43 CFR 46.415[b][1]) state, “the analysis of the effects of the no-action alternative may be documented by contrasting the current condition and expected future condition should the proposed action not be undertaken with the impacts of the proposed action and any reasonable alternatives.” As noted by Bass, Herson and Bogdan, “[i]t is easy to confuse the baseline with the no-action alternative” (2001). They go on to explain “[t]he baseline is essentially a description of the affected environment at a fixed point in time, whereas the no-action alternative assumes that other things will happen to the affected environment even if the proposed action does not occur” (2001). NPS has followed this direction in the EIS. For the no-action alternative, NPS contrasted the current condition as described in “Chapter 3: Affected Environment” and the expected future condition should a new SUP not be issued. This allows the decision-maker to see what no action would look like, versus the current conditions.

To clarify how impacts on resources were evaluated, a new section titled “Format of the Analysis” has been included at the beginning of chapter 4 on pages 293-295.

IA2500 - Impact Analysis: References Used for Assessing Impacts

Concern Statement 36053	Commenters stated that the impact assessment in the EIS should be based on a comprehensive review of unbiased scientific data.
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NPS Response to Concern Statement 36053:

Over 850 additional items were suggested during preparation of the Final EIS. References that were not applicable (i.e., not within Drakes Estero or for research conducted in a dissimilar setting) or did not meet the criteria described under “References Used for Impact Analysis” on page 27-28 of the Final EIS were not used in preparing the Final EIS. Over 150 references were closely reviewed, considered for use, and are incorporated where relevant, including the “Drakes Estero Setting and Process” section. The scientific analysis of the Draft EIS has been the subject of several peer reviews, as described on page 28-34 of chapter 1 in the section titled “Independent Reviews of Data Used in this EIS.”

Concern Statement 36054	Commenters stated the EIS should describe assumptions/limitations of the NAS (2009) report and fill in the NAS deficiencies by doing a broader literature review and analysis.
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NPS Response to Concern Statement 36054:

As described in the “References Used for Impact Analysis” section on pages 27-28 of the Final EIS, NAS 2009 did form the basis for preparation of the EIS. However, due to the limitations in scope of the NAS 2009 report, as noted on pages 23 and 236 of the Final EIS, additional references beyond those used in the NAS report were reviewed and incorporated where appropriate in preparing the EIS. More recent literature also was reviewed in preparing both the Draft and Final EISs.

Concern Statement 36389	Commenters requested that additional secondary references be included in the EIS and the existing references should include more detail to facilitate tracking of relevant information.
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NPS Response to Concern Statement 36389:

As mentioned above, the impact analysis presented in the EIS is based on the best available science, as indicated on pages 27-28 of the Final EIS in the “References Used for Impact Analysis” section. In general, secondary references were not used for the analysis, unless there was a compelling reason to do so. Examples of secondary references deemed appropriate include the letters to and from DBOC used to describe its operations. Endnotes are provided for these references for ease of access to the relevant portions of these items.

For a discussion on the use of the photographs taken of harbor seals in Drakes Estero, see the response to concern ID 36206.

The format for reference documentation in the text is the author-date method, which correlates to the “Bibliography” provided at the back of the EIS. The author-date system is the standard method of citation used by the NPS, as directed by the NPS Denver Service Center Editing Reference Manual (2010). The author-date method used by the NPS is a modified version of the author-date system recommended by the Chicago Manual of Style. In addition, to assist readers with tracking correspondence letters (a secondary source of information) endnotes are provided throughout the EIS, including direct quotations from the applicable correspondence.

Concern Statement 38638	A commenter requested information regarding what field work was conducted to describe existing conditions.
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NPS Response to Concern Statement 38638:

Preparation of the EIS was based on a review of existing documents and studies, as indicated on pages 27-28 of the Final EIS in the “References Used for Impact Analysis” section. Additional field work was limited to field reconnaissance by NPS staff to field verify wetlands and waters of the U.S. within the project area, a field reconnaissance of the property (onshore and offshore) to assist in the preparation of the Determination of Eligibility for listing on the National Register (all associated facilities and landscape), a topographic survey of the onshore operations for the purpose of determining flood zone within the coastal hazard zone, an archeology report regarding the presence of *Ostrea lurida* in Drakes Estero, and as part of the parkwide aquatic invasive project, a more specific study related to invasive species in Drakes Estero was published and reviewed (Grosholz 2011b). Contractors preparing the EIS also visited the project area on two occasions, the first visit included a tour by DBOC of the onshore operations, and the second visit included a tour by DBOC of the onshore and offshore operations.

IA3200 - Impact Analysis: Climate Change

Concern Statement 36055	Commenters felt the EIS should address the potential impacts of climate change on the resources of Drakes Estero.
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NPS Response to Concern Statement 36055:

Consistent with NPS guidance (NPS 2009g), the known and predicted impacts of climate change on resource topics within the project area are included in chapter 3 as part of the existing conditions description. For the impact analysis sections, the impacts of the alternatives on resources potentially affected by climate change are evaluated in the context of the changing environment over the 10-year period of analysis identified for the project.

Concern Statement 36903	A commenter stated that the EIS should consider the impacts of ocean acidification on west coast shellfish production.
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NPS Response to Concern Statement 36903:

The potential effects of ocean acidification on benthic fauna such as bivalves (e.g., loss of calcium in shell-building species requiring calcium carbonate) are described under the heading “Bivalves” in chapter 3 of the EIS. In addition, Olympia oyster is not currently part of the existing operation and is therefore evaluated under alternative D. Further, the archeological record suggests that Olympia oyster has never been a common inhabitant of Drakes Estero. For example, the study by Konzak and Praetzellis (2011) titled *Archaeology of Ostrea lurida in Drakes Estero, Point Reyes National Seashore* discusses in detail the archeological evidence of historic shellfish populations in Drakes Estero. The primary conclusions of this study are summarized in the following excerpt from that report: “...there is no archaeological evidence that a sizeable population of [Olympia oyster] inhabited Drakes Estero and was utilized as a primary dietary resource by the Coast Miwok.” Further, “While small populations of the Olympia oyster may have existed in the Estero and been utilized by the Coast Miwok, the relative abundance of oyster remains in Tomles Bay and their absence at all but two archaeological sites in Drakes Estero make it more likely that the oysters were brought in from Tomales Bay.” This report is available for public access on the NPS Point Reyes website.

The analysis in the EIS focuses on the impact topics within the project area. An analysis on west coast shellfish production is outside the scope of this project.

IA3300 - Impact Analysis: Water Quantity

Concern Statement 36139	A commenter requested that the EIS address the impacts on fresh water quantity.
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NPS Response to Concern Statement 36139:

Impacts on fresh water quantity are related to the amount of ground water DBOC uses for wastewater and potable uses. The amount of well water used by DBOC does not noticeably impact the availability of fresh water in the area and was therefore not retained as an impact topic for analysis in the Final EIS.

IA3400 - Impact Analysis: Invasive Species

Concern Statement 36138	Commenters requested that the EIS address invasive species as a stand-alone impact topic in addition to discussing it in other relevant topics.
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NPS Response to Concern Statement 36138:

Impact topics are generally defined in terms of particular resources or values that are subjected to impacts, rather than sources of impacts. Invasive species are not addressed as a stand-alone impact topic, because they are generally a source of impacts, rather than a park resource. The impacts of invasive species on the resources within the project area are addressed in the appropriate impact topics throughout the document.

IA4000 - Impact Analysis: Cumulative Impacts

Concern Statement 36294	Commenters stated that the EIS should consider the impacts of past actions, including those at Johnson Oyster Company and DBOC, as part of the cumulative analysis.
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NPS Response to Concern Statement 36294:

The CEQ regulations that implement NEPA require assessment of cumulative impacts in the decision-making process for federal projects. Cumulative impacts are defined as impacts which result when the impact of the proposed action is added to the impacts of other past, present, and reasonably foreseeable future actions, regardless of what agency (federal or nonfederal) or person undertakes such other actions (40 CFR 1508.7). Projects were selected as cumulative actions in the Final EIS if it was determined that a project had the potential to contribute to cumulative impacts on at least one of the affected resources in conjunction with the potential impacts of the alternatives presented in this document. The past actions considered in this EIS are bounded by approximately five years.

Because the impacts resulting from DBOC operations and facilities are closely related to previous impacts by Johnson Oyster company, the long term impacts of past DBOC and Johnson Oyster Company operations in Drakes Estero were captured in the cumulative impacts analysis by disclosing these impacts as part of the affected environment, as described in chapter 3 of the Final EIS. These impacts are discussed to the extent that information exists on past Johnson Oyster Company activities. For example, historic filling of tidal wetlands associated with the development of the onshore facilities by Johnson Oyster Company approximately 30 to 50 years ago on page 219. Continued eelgrass scarring from historic propeller damage in the channel from the onshore operations into Schooner Bay is discussed on pages 225-226. Use and introduction of nonnative, invasive, and commercial species, including shellfish species such as Kumamoto oysters and the nonnative mud snail (*Battillaria attramenaria*), are discussed on page 230.

The consideration of the regional loss of eelgrass is not an appropriate application of cumulative impact analysis, as the loss of eelgrass in other areas is outside the spatial boundary being considered in the cumulative impacts analysis in the EIS and does not equate to greater impacts to the eelgrass in Drakes Estero. Consistent with NPS guidance, climate change is not considered in the cumulative impact section, as there is not a single “action” that contributes to climate change (NPS 2009g). Instead, impacts of climate change to the project area are discussed in the Affected Environment where appropriate and impacts of the project on climate change are discussed in the “Purpose of Need for Action” section on pages 42-43 of the EIS.

IA4200 - Cumulative Impacts: Kayaking

Concern Statement 36062	Commenters requested that the EIS consider the impacts of kayakers on the resources of Drakes Estero.
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NPS Response to Concern Statement 36062:

The impact of kayakers on the resources of Drakes Estero is addressed under cumulative impacts for wildlife and wildlife habitat (harbor seals and birds), special-status species, soundscapes, visitor experience and recreation, and socioeconomic resources. Further, as stated on page 374 of the Final EIS, “[n]onmotorized boats, including kayaks, are known to disrupt hauled-out harbor seals (Becker, Press, and Allen 2011; MMC 2011b). As such, continued kayaking within Drakes Estero would result in minor adverse impacts on harbor seals.” A general description of kayaking and how it is addressed in the document is provided on page 303 of the Final EIS in the “Past, Present, and Reasonably Foreseeable Actions” section. It should also be noted that the harbor seal pupping closure applies to kayakers. Drakes Estero is closed to recreational kayak access between March 1 and June 30 annually.

IA4300 - Cumulative Impacts: Ranching

Concern Statement 36067	Commenters requested that the EIS consider the impacts of the ranches on the resources of Drakes Estero.
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NPS Response to Concern Statement 36067:

There are no dairy farms within the Drakes Estero watershed. The ranches produce beef cattle in the Drakes Estero watershed. The primary effect the ranches have on Drakes Estero is on water quality. This has been discussed relative to the state’s mandated water sampling protocols and harvesting restrictions discussed in the water quality section of chapter 3, as well as in the cumulative impact analyses in the EIS in considering pollution inputs from the pastoral watershed. Ranchers in cooperation with the NPS have installed and continue to install riparian fencing and other Best Management Practices to reduce cattle access to stream habitat.

IA4350 - Cumulative Impacts: Human-caused Noise Sources

Concern Statement 36070	Commenters requested that the EIS consider the impact of cumulative human-caused noise sources in greater detail and questioned the restoration of natural soundscape in the presence of ongoing cumulative human-caused noise sources.
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NPS Response to Concern Statement 36070:

Additional detail regarding the proportion of noise contributed by overflights to the soundscape as reported in the Volpe 2011 report is included in the cumulative impact analysis sections of the “Impacts on Soundscapes” of chapter 4 of the Final EIS. The Volpe report estimates that the change in median sound levels (L_{50}) due to all aircraft at the PORE004 site is small: 1.4 dBA in summer and 1.7 dBA in winter. Within the study area, the contribution of noise to the soundscape from DBOC’s operations to the cumulative impact on soundscapes is considered appreciable. The presence of other noise sources is not considered as mitigating the effects of DBOC noise. Management of cumulative noise sources is outside the scope of this project.

IA4600 - Cumulative Impacts: Marine Life Protection Act Initiative

Concern Statement 36371	A commenter felt the analysis of reasonably foreseeable future actions should include the upgrade of Drakes Estero to a fully protected, no-take State Marine Reserve (SMR) by CDFG and the California Fish and Game Commission (CFG) after Drakes Estero is converted to wilderness and shellfish operations cease.
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NPS Response to Concern Statement 36371:

Under the California Marine Life Protection Act, the state has established and implemented restrictions on fishing of public trust resources within State Marine Conservation Areas and Marine Reserves. The designation of Drakes Estero as a State Marine Conservation Area, and any decision regarding State Marine Reserve status is a decision of the Fish and Game Commission (CFG).

Review of the discussions related to Drakes Estero indicate that during the state planning process there was an alternative to convert Drakes Estero to a State Marine Reserve upon cessation of the aquaculture lease. This is not articulated in the final EIR adopted by the CFG. Any determination with respect to revising the reserve status of Drakes Estero is under the purview of the state and therefore is not reasonably foreseeable for purposes of the cumulative impact analysis in the EIS.

IM1000 - Impairment

Concern Statement 37198	A commenter suggested that continued commercial shellfish operations in Drakes Estero would constitute impairment of Seashore resources.
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NPS Response to Concern Statement 37198:

Under section 124, the Secretary may issue a permit to DBOC “notwithstanding any other law” including the NPS Organic Act from which the non-impairment standard derives.

BE1000 - Wildlife and Wildlife Habitat - Benthic Fauna: Affected Environment

Concern Statement 36075	A commenter requested additional detail on the effects of ocean acidification on benthic fauna.
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NPS Response to Concern Statement 36075:

The potential effects of ocean acidification on benthic fauna (e.g., loss of calcium in shell-building species requiring calcium carbonate) are described under the heading “Bivalves” in chapter 3 of the EIS (pages 227-229).

Concern Statement 36076	Commenters requested that use of specific references related to benthic fauna existing conditions be reviewed and/or revised.
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NPS Response to Concern Statement 36076:

Over 850 additional items were suggested during preparation of the Final EIS. References that were not applicable (i.e., not within Drakes Estero or for research conducted in a dissimilar setting) or did not meet the criteria described under “References Used for Impact Analysis” on page 23 of the Final EIS were not used in preparing the Final EIS. Over 150 references were closely reviewed, considered for use, and are incorporated where relevant to the appropriate sections. Please refer to the “Benthic Fauna” section of chapter 3 (pages 227-230) for references used. Text revisions specific to these recommended changes (e.g. reference citations, etc.) are found on pages 228 and 229.

<p>Concern Statement 36077</p>	<p>Commenters requested additional or revised description of the following items regarding existing benthic species:</p> <ul style="list-style-type: none"> -location of existing nonnative populations -historic presence and special-status species status of Olympia oyster -specification of which species are native -presence of purple-hinged rock scallop in Drakes Estero -introduction of invasive species in Drakes Estero -current use of triploid stock
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NPS Response to Concern Statement 36077:

The distribution of nonnative populations outside of the production area has not been assessed in detail. However, research by Grosholz (2011) regarding the positive identification of Pacific oysters naturalizing in Drakes Estero and Tomales Bay has been added to the text and cited (under the chapter 3 “Nonnative, Invasive, and Commercial Shellfish Species” section, pages 229-230).

Data on Olympia oyster with respect to Drakes Estero are limited; the available information has been included in the EIS, and the text has been modified to provide clarification. Please refer to the “Bivalves” section of chapter 3 (pages 227-229). Any reference to Olympia oyster as a special-status species has been removed from the text.

Specification on which species are native has been added to the text in the “Bivalves” section of chapter 3 (page 227).

Data on purple-hinged rock scallop with respect to Drakes Estero are limited; the available information has been included in the EIS, and text related to this species has been modified to provide clarification. Please refer to the “Impacts on Wildlife and Wildlife Habitat: Benthic Fauna” section of chapter 4 (pages 341-356). A short description of purple-hinged rock scallop has been added to chapter 3 (page 229). Impacts are discussed where cultivation of this species is considered.

There are no studies that have analyzed the vectors associated with invasive species introductions in Drakes Estero. The language specific to this issue has been modified. Please refer to the “Nonnative, Invasive, and Commercial Shellfish Species” section of chapter 3 (page 229).

The use of reproductive diploid stock in culturing nonnative species – as opposed to non-reproductive triploid stock – and its potential implications for species introductions is discussed in the Final EIS on pages 229.

BE2000 - Wildlife and Wildlife Habitat - Benthic Fauna: Impact of Alternatives

<p>Concern Statement 36081</p>	<p>Commenters stated that the impact of removing benthic fauna habitat provided by commercial shellfish operations is understated.</p>
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NPS Response to Concern Statement 36081:

There is no specific research on the habitat quality in Drakes Estero as it relates to commercial shellfish beyond the research already cited in the EIS. The text describing the impacts of alternative A on benthic fauna were revised to acknowledge the removal of habitat for species using the type of habitat associated with commercial shellfish operations. Please refer to the “Impacts on Wildlife and Wildlife Habitat: Benthic Fauna” section in chapter 4 (page 343-346). Note that structures and bags are introduced, artificial habitats and are not natural. NPS *Management Policies 2006* (NPS 2006d, section 4.4.1) state that the NPS will maintain native plants and animals “preserving and restoring the natural abundances, diversities, dynamics, distributions...” of those species. For additional information, refer to the response to Concern ID 36334.

Concern Statement 36082

Commenters questioned the description regarding impacts of disease on benthic fauna.

NPS Response to Concern Statement 36082:

Text has been modified to clarify the statements regarding impacts related to diseases that could affect benthic fauna. Specifically, the following has been added: “In a letter dated November 15, 2010, DBOC indicated that it manages invasive species by meeting the requirements set forth by its CDFG lease and Title 14 CCR to “minimize the chances of introducing invasive species or pathological microorganisms to Drakes Estero.” (page 349). In addition, note that the phrase “...although MSX only affects the Pacific and eastern oysters” has been added to the text to clarify potential pathogen-bivalve relationships in Drakes Estero (alternative B, page 348).

Further, NAS (2009) provides the following statements concerning species introductions in Drakes Estero: “The oysters and clams cultured in Drakes Estero are nonnative species that have some risk of establishing self-sustaining populations. In the past, importations of nonnative oysters were associated with the introduction of a salt marsh snail, *Batillaria attramentaria*, and the oyster pathogenic parasite, *Haplosporidium nelsoni*.” (page 5). Also, “Although the *Didemnum* introduction cannot be attributed to local human importation, other nonnative species were introduced by the shellfish operations, including the intentionally imported shellfish — the Pacific oyster (*Crassostrea gigas*), the Kumamoto oyster (*Crassostrea sicamea*), and the Manila clam (*Venerupis [Ruditapes] philippinarum*); and two hitchhikers—a nonnative salt marsh snail (*Batillaria attramentaria*) (Byers, 1999) and a protozoan parasite of oysters (Burreson et al., 2000).” (page 21). These statements are summarized in the Final EIS on pages 348-351.

Concern Statement 36083

Commenters requested additional detail regarding the impacts on the benthic fauna of Drakes Estero due to continued commercial shellfish operations, including the following items:

- risk of genetic alterations
- predator-prey relationships
- sediment chemistry (related to suitability for native benthic fauna)
- use of chemicals and antibiotics associated with commercial shellfish operations
- possibility of genetic mining

NPS Response to Concern Statement 36083:

There is no site-specific research, or research in general, that would apply to the impact analysis of the following items:

- sediment chemistry beneath bottom bags within a setting such as Drakes Estero
- genetic alterations in Drakes Estero -“genetic mining,” as the term is used here
- displacement and re-establishment of native benthic species in Drakes Estero
- predator-prey dynamics, and the role that commercial shellfish production plays thereto, within Drakes Estero, beyond that already cited in the EIS.

Note that reference to Executive Order 13112 on invasive species has been added to the impact analysis under Conclusions in the Benthic Fauna section of chapter 4, under the impacts discussion of each alternative (pages 341-356).

The use of reproductive diploid stock in culturing nonnative species – as opposed to non-reproductive triploid stock – and its potential implications for species introductions is discussed in the Final EIS on pages 229.

The topic of pressure treated lumber used for racks is addressed in the chapter 4 water quality section. The analysis from the literature concludes that leachates from treated lumber would dramatically decline after the first few weeks of exposure to the aquatic environment. By 90 days, 99 percent of all of the leaching has occurred. Based on regulatory permit conditions that would likely be associated with rack repair activity, it is assumed that any new lumber used for rack repair would require an approved coating material in order to minimize the potential for release of copper leachates from treated wood into aquatic environments.

DBOC has indicated (DBOC 2012b) that it does not add nutrients to the water used during setting but that it does occasionally add microalgae (specifically Instant Algae® Shellfish Diet 1800™). This information has been added to the description of DBOC operations in the Final EIS; however, this action is not expected to have noticeable impacts on the resources discussed in the EIS.

Concern Statement 36085	Commenters requested that use of specific references related to impacts on benthic fauna be reviewed and/or revised.
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NPS Response to Concern Statement 36085:

Over 850 additional items were suggested during preparation of the Final EIS. References that were not applicable (i.e., not within Drakes Estero or for research conducted in a dissimilar setting) or did not meet the criteria described under “References Used for Impact Analysis” on page 23 of the Final EIS were not used in preparing the Final EIS. Over 150 references were closely reviewed, considered for use, and are incorporated where relevant. Please refer to the “Impacts on Wildlife and Wildlife Habitat: Benthic Fauna” section in chapter 4 (page 341-356) for references used.

Concern Statement 36310	Commenters requested additional detail regarding relevant law and policy related to benthic fauna.
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NPS Response to Concern Statement 36310:

Text on policy related to benthic fauna has been added under “Laws and Policies” (pages 341-342).

Concern Statement 38488	Commenters stated that the risk of naturalized/feralized shellfish in Drakes Estero due to continued commercial shellfish operations are overstated.
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NPS Response to Concern Statement 38488:

Note that recent research by Grosholz (2011b) has identified the presence of reproducing Manila clams (independent of culture bags) and Pacific oysters growing independent of culture areas in Drakes Estero. These observations have been cited in chapter 3 under “Nonnative, Invasive, and Commercial Shellfish Species” (pages 229-230). Based on this research, these organisms are able to escape cultivation in Drakes Estero. Additionally, in the 2012 NAS review of the Draft EIS, the NAS committee recommended removal of Manila clams as an approach to reduce risk of establishment by this known invasive species along the Pacific coast. Also, note that Pacific oyster has recently been identified as an invasive species in the San Francisco Bay region (San Francisco Bay Joint Venture Science Subcommittee 2011) (EIS pages 229 and 344). Further, regarding competition and carrying capacity, the cultivated filter feeders use the same resources as native filter feeders. Interspecific competition is a reciprocally-negative interaction involving a limiting resource, which has implications on carrying capacity. The EIS makes no statements regarding interspecific competition that would require an understanding of population carrying capacity in this context.

Concern Statement 38489	Commenters stated that the risk of naturalized/feralized shellfish in Drakes Estero due to continued commercial shellfish operations are understated.
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NPS Response to Concern Statement 38489:

Note that recent research by Grosholz (2011b) has identified the presence of reproducing Manila clams (independent of culture bags) and Pacific oysters growing independent of culture areas in Drakes Estero. These observations have been cited in chapter 3 under “Nonnative, Invasive, and Commercial Shellfish Species” (pages 229-230). Based on this research, these organisms are able to escape cultivation in Drakes Estero. Additionally, in the 2012 NAS review of the Draft EIS, the NAS committee recommended removal of Manila clams as an approach to reduce risk of establishment by this known invasive species along the Pacific coast. Also, note that Pacific oyster has recently been identified as an invasive species in the San Francisco Bay region (San Francisco Bay Joint Venture Science Subcommittee 2011) (EIS pages 229 and 344).

Concern Statement 38493	Commenters stated that the risk of the spread of fouling organisms (e.g., <i>Didemnum</i>) in Drakes Estero due to continued commercial shellfish operations is overstated.
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NPS Response to Concern Statement 38493:

Recent research by Grosholz (2011b) has identified and the presence of *Didemnum* growing on eelgrass within Drakes Estero. This has also been observed in Tomales Bay. There is no specific research on the risk of spread of fouling organisms in Drakes Estero, nor is there any specific literature for research conducted in Drakes Estero that satisfies the guidelines for primary references as specified in chapter 1: References Used For Impact Analysis. The information available on this topic has been provided in the EIS. In addition, the EIS does include a monitoring component under all alternatives, which would be looking at the distribution and density of *Didemnum*. For additional discussion, refer to response to Concern ID 36082.

Concern Statement 38502	Commenters stated that the risk of the spread of fouling organisms (e.g., <i>Didemnum</i>) and other invasive organisms in Drakes Estero due to continued commercial shellfish operations is understated.
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NPS Response to Concern Statement 38502:

Recent research by Grosholz (2011b) has identified and the presence of *Didemnum* growing on eelgrass within Drakes Estero. This has also been observed in Tomales Bay. There is no specific research on the risk of spread of fouling organisms in Drakes Estero, nor is there any specific literature for research conducted in Drakes Estero that satisfies the guidelines for primary references as specified in chapter 1: References Used For Impact Analysis. The information available on this topic has been provided in the EIS. In addition, the EIS does include monitoring/management component under all alternatives, which would be looking at the distribution and density of *Didemnum*. For additional discussion, refer to response to Concern ID 36082.

BI1000 - Wildlife and Wildlife Habitat - Birds: Affected Environment

Concern Statement 36110	<p>Commenters requested additional designations for the important role the project area plays for birds be included in the EIS, specifically:</p> <ul style="list-style-type: none"> -Audubon recognizes the Seashore as a Global Important Bird Area -U.S. Shorebird Conservation Plan identifies Drakes Estero as a site of regional importance
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NPS Response to Concern Statement 36110:

These designations and available information were added to the “Birds” section of chapter 3 (pages 235-239).

BI2000 - Wildlife and Wildlife Habitat - Birds: Impact of Alternatives

Concern Statement 36142	<p>Commenters stated that the adverse impacts of commercial shellfish operations on birds are understated and requested additional detail regarding:</p> <ul style="list-style-type: none"> -shellfish operation debris -use of precautionary principle -shellfishing boat trips -additional species -increased vulnerability to predators -displacement of feeding habitat -avoidance/deprivation of rest and foraging habitat
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NPS Response to Concern Statement 36142:

Text has been modified to provide additional detail for these topics in the “Wildlife and Wildlife Habitat: Birds” section of chapter 4 (pages 382-399). Specific documentation of local short-term impacts of disturbance to birds in the project area is not available due to the lack of related data in Drakes Estero. As a result, additional text included results from shorebird studies in estuarine settings similar to Drakes Estero, such as the study conducted by Kelly et al. (1996) in Tomales Bay. Impacts were not always addressed on the population-level due to the scope of the studies from similar settings.

Text regarding the introduction of plastics from the shellfish operations to the marine ecosystem was added to this section of the EIS. The modification acknowledges the history of plastic debris in Drakes Estero and reiterates the ongoing requirement of DBOC to retrieve plastic debris lost during DBOCs

operations. In their October 24, 2012 Notice of Intent to proceed with a new Cease and Desist and Restoration Order, the CCC concludes that as a result of documented discharge of marine debris in the form of abandoned, discarded, or fugitive aquaculture materials, DBOC is in violation of Section 3.2.2 of the 2007 Cease and Desist Order.

Additional detail regarding removal of plastic debris is provided in chapter 2 of the EIS.

The text was modified to include greater detail on different bird species that use Drakes Estero. Since limited data from similar settings exists for the less abundant bird species, the text focuses in part on shorebird species that are the most abundant according to available data, as well as species that may be more sensitive to disturbance (such as brant). The EIS added more analysis of potential impacts to waterbirds, such as pelican and cormorants, and a list of birds observed by White (1999) has also been added to reflect the diversity of bird species that use Drakes Estero. Despite text additions to the bird section of the EIS, the impact levels are still moderate for alternative B, C, and D. The analysis used to draw this conclusion reflects the available data for Drakes Estero and bird studies from similar estuarine settings.

<p>Concern Statement 36145</p>	<p>Commenters stated that beneficial impacts of commercial shellfish operations on birds is understated and requested additional detail, including:</p> <ul style="list-style-type: none"> -provision of diverse habitat -provision of food source -provision of resting habitat -provision of foraging habitat
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NPS Response to Concern Statement 36145:

Text has been modified to include greater detail on the impacts of commercial shellfish operations pertaining to roosting and foraging habitat of birds in accordance with the guidelines set forth under “References Used For Impact Analysis.” Some of the literature suggested to support beneficial impacts of commercial shellfish operations on birds are not geographically similar, or have dissimilar shellfish operation settings to Drakes Estero. Such literature was not incorporated in the EIS.

<p>Concern Statement 36148</p>	<p>Commenters requested that use of specific references related to impacts on birds be reviewed and/or revised.</p>
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NPS Response to Concern Statement 36148:

Over 850 additional items were suggested during preparation of the Final EIS. References that were not applicable (i.e., not within Drakes Estero or for research conducted in a dissimilar setting) or did not meet the criteria described under “References Used for Impact Analysis” on page 23 of the Final EIS were not used in preparing the Final EIS. Over 150 references were closely reviewed, considered for use, and are incorporated where relevant. Please refer to the “Impacts on Wildlife and Wildlife Habitat: Birds” section of chapter 4 (pages 382-399) for references used.

<p>Concern Statement 36150</p>	<p>Commenters requested additional detail regarding relevant law and policy related to birds.</p>
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NPS Response to Concern Statement 36150:

Text has been modified to address comments on law and policy, including the MOU between NPS and USFWS. Please refer to the “Law and Policy” section of chapter 1.

Concern Statement 38510	Commenters requested additional detail and/or clarifications regarding black brant and other waterbird use of the project area.
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NPS Response to Concern Statement 38510:

The EIS has been modified to include more information regarding resting and roosting behavior for some species, as well as relevance of disturbance during spring migration. Additional literature was also cited from similar settings. The EIS has also been modified to include some additional analysis pertaining to the effects of disturbance in Drakes Estero, and draws conclusions from the impacts of disturbance on energy expenditure and reproductive success in breeding grounds. The text has also been modified to provide additional information regarding brant foraging behavior, sensitivity to disturbance, and use of eelgrass beds.

EE1000 - Eelgrass: Affected Environment

Concern Statement 36157	Commenters requested additional detail on the role of eelgrass in Drakes Estero.
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NPS Response to Concern Statement 36157:

The role of eelgrass as habitat for wildlife is also discussed under the heading “Impact Topic: Wildlife and Wildlife Habitat” in chapter 3 (pages 230-231, 235-237, and 239). Text was revised to read: “Eelgrass beds help to structure the food web (the “web” of relationships between organisms and their primary food sources) in many coastal habitats, particularly those such as Drakes Estero where eelgrass is a dominant photosynthetic organism in the system (see discussion under “Primary Productivity”). In addition, eelgrass provides important habitat for fish, invertebrates, and other aquatic organisms, as well as foraging grounds for many types of waterbirds and shorebirds, such as the black brant (for further discussion, see impact topics under “Wildlife and Wildlife Habitat”).

Concern Statement 36158	Commenters requested additional detail on the historical eelgrass conditions in Drakes Estero.
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NPS Response to Concern Statement 36158:

A revision to the text has not been made because the current and historic status of eelgrass within Drakes Estero has already been discussed in the “Impacts on Eelgrass” section of chapter 4. The EIS cites data that were considered by the National Academy of Sciences (NAS 2009) which include eelgrass coverage back to 1991. Also see discussion under Concern ID 36342.

Concern Statement 36334	Commenters requested additional detail on the relationship between shellfish filtration of the water and eelgrass productivity.
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NPS Response to Concern Statement 36334:

No specific data on the relationship between shellfish filtration and eelgrass productivity are available for Drakes Estero. Filter feeding benefits associated with oysters are acknowledged, and additional information regarding the ecosystem effects of filter feeders was added to the EIS under the heading “Biogeochemical Cycling” in chapter 3. At issue is whether the oysters in Drakes Estero dramatically improve water quality such that their removal would be quantifiably observed if measured. The only known data set where water quality parameters were measured immediately adjacent to racks and far removed from racks was collected by Wechsler (2004), who found no difference in water quality. Based on this and other literature sources, the driving force behind the water quality of the estero is the daily nutrient supply provided by Drakes Bay and Pacific Ocean, and the role of the oysters in affecting water quality in Drakes Estero is localized.

Further, as stated by NMFS Deputy Regional Administrator Kevin Chu in NOAA correspondence dated December 2011, “NMFS does not have information indicating that water quality effects from the DBOC operations benefit the overall health of eelgrass in Drakes Estero. Similarly, NMFS does not have information suggesting that eelgrass would be harmed should DBOC operations cease.” Further, Dr. Edwin Grosholz indicates that “there are really no data at all available from this system and it remains an open question entirely whether oyster filter feeding has any effect positive or negative on eelgrass” (Atkins 2012a). Also, Dr. Donna Padilla states: “Thus, there are no data to support a notion that in this system aquaculture improves water quality or habitat quality for eelgrass” (Atkins 2012a).

For additional discussion on the status of Olympia oysters in Drakes Estero, refer to Concern ID 35984.

EE2000 - Eelgrass: Impact of Alternatives

Concern Statement 36160	Commenters requested that the methodology for assessing impacts on eelgrass incorporate issues such as interannual variability.
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NPS Response to Concern Statement 36160:

Impacts to eelgrass are considered at scales that are relevant to the intensity definitions established for this EIS and define in the “Methodology” section on page 328-329.

Regarding the seasonal variability of eelgrass within the estero, the EIS makes no assertions as to the potential negative impacts of shellfish operations at the level of the whole ecosystem. Impacts are assessed at the localized level, which is consistent with impact analysis for other natural resources considered. Localized impacts to eelgrass will occur regardless of seasonal variability.

Concern Statement 36161	Commenters requested elaboration on how the eelgrass cuts were calculated and justification for use of this assessment as a basis for adverse impacts.
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NPS Response to Concern Statement 36161:

Additional clarification has been added under the “Methodology” heading on page 328-329.

The method and use of aerial photographs is based on standard methods which are described in peer-reviewed publications describing scientific studies using those methods (e.g., Zieman 1976; NPS 2008a). The eelgrass scarring represents a snapshot that does not provide any information on the duration and persistence

of the impacts. Based on the extent of scarring, and the documented need by DBOC to access the estero during low tides, it is reasonable to assume that as some scars recover, others are established. As the text describes, it is assumed that for scarring to be observed from the aerial photographs, it is a result of scarring to substrate (see the “Impacts on Eelgrass - Methodology” section of chapter 4, page 328-329).

Concern Statement 36176	Commenters requested that use of specific references related to impacts on eelgrass be reviewed and/or revised.
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NPS Response to Concern Statement 36176:

Over 850 additional items were suggested during preparation of the Final EIS. References that were not applicable (i.e., not within Drakes Estero or for research conducted in a dissimilar setting) or did not meet the criteria described under “References Used for Impact Analysis” on pages 27-28 of the Final EIS were not used in preparing the Final EIS. Over 150 references were closely reviewed, considered for use, and are incorporated where relevant. Please refer to the “Impacts on Eelgrass” section of chapter 4 (pages 326-341) for references used.

With respect to Elliott-Fisk et al. (2005), this reference is a report that describes the results of several studies within Drakes Estero and Estero de Limantour. The report summarizes research that is also described in several unpublished theses which are already cited in the Final EIS (e.g., Harbin-Ireland [2004], Wechsler [2004], Press [2005]). Elliott-Fisk et al. (2005) is not a peer-reviewed document and as such does not meet the technical standards for primary reference described in chapter 1 (page 27), as follows: “Primary references are those for which evidentiary support is traceable to a source that complies with recognized standards for data documentation and scientific inquiry. For example, data pertaining directly to the activities and conditions within Drakes Estero were obtained from NPS documents and other sources that have been prepared consistent with NPS standards for scientific and scholarly activities, including relevant peer review. For research conducted in similar settings (but not in Drakes Estero itself), references were taken from peer-reviewed scientific literature.”

Concern Statement 36177	A commenter requested additional detail regarding relevant law and policy related to eelgrass.
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NPS Response to Concern Statement 36177:

The position of the U.S. Army Corps of Engineers regarding eelgrass has been added to the “Impacts on Eelgrass” section in chapter 4 of the EIS.

Concern Statement 36336	Commenters requested that the impact topic of eelgrass be dismissed due to the short timeframe for regeneration of eelgrass and therefore a lack of impacts.
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NPS Response to Concern Statement 36336:

Impacts to eelgrass are considered at scales that are relevant to the intensity definitions established for this EIS. Under these assessment guidelines, this topic may not be dismissed. Refer to chapter 1 and chapter 4 for more information relevant to guidelines for dismissal and impact analysis. Also note that the discussion regarding eelgrass impacts has been revised to include updated guidelines from the draft California Eelgrass Mitigation Policy (see Final EIS page 327).

Concern Statement 36341	A commenter requested the EIS acknowledge the presence of accumulated oyster shell debris under the racks and the associated implications for eelgrass recolonization in these areas.
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NPS Response to Concern Statement 36341:

There are no studies measuring the accumulation of shell debris under DBOC oyster racks, nor is there any specific literature for research on this topic conducted in Drakes Estero that satisfies the guidelines for primary references as specified in the “References Used for Impact Analysis” in chapter 1 (pages 27-28). To the extent that accumulated shell material can inhibit colonization, this material would be removed by hand under alternative A to reduce the area of hard substrate within the potential eelgrass beds. This is referenced in the benthic fauna section of chapter 4, as part of the alternative A impact analysis (page 331).

Concern Statement 36342	Commenters requested clarification regarding how commercial shellfish production has been judged an adverse impact on eelgrass considering recent expansion in Drakes Estero.
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NPS Response to Concern Statement 36342:

Impacts to eelgrass are considered at scales that are relevant to the intensity definitions established for this EIS (please refer to the “Methodology” section on pages 328-329). Under these assessment guidelines, the impacts fall under the criterion of “measurable change” that would negatively affect eelgrass primary productivity, which would be an adverse impact.

Regarding the doubling of eelgrass within the estero, the EIS makes no assertions as to the potential negative impacts of shellfish operations at the level of the whole ecosystem. Impacts are assessed at the localized level, which is consistent with impact analysis for other natural resources considered. Regardless of the scientific veracity of the eelgrass doubling cited in NAS (2009) (which, as indicated by Dr. Edwin Grosholz (Atkins 2012a), was based on interpretation of low resolution imagery and is unreliable), the localized effects remain.

Scientific research studying the effects of shellfish operations on eelgrass in Drakes Estero is very limited. Research cited in the analysis of impacts on eelgrass is based on an extensive review of primary scientific publications in similar settings.

The ecosystem effects of cultivated bivalves have been not been studied in Drakes Estero. As stated by NMFS Deputy Regional Administrator Kevin Chu in NOAA correspondence dated December 2011, "NMFS does not have information indicating that water quality effects from the DBOC operations benefit the overall health of eelgrass in Drakes Estero. Similarly, NMFS does not have information suggesting that eelgrass would be harmed should DBOC operations cease." Further, Dr. Edwin Grosholz indicates that "there are really no data at all available from this system and it remains an open question entirely whether oyster filter feeding has any effect positive or negative on eelgrass" (in Atkins 2012a). Also, Dr. Donna Padilla states: "Thus, there are no data to support a notion that in this system aquaculture improves water quality or habitat quality for eelgrass" (Atkins 2012a).

For more information on these topics, refer to Concern Statement ID 36344.

Concern Statement 36344	Commenters requested a discussion of potential mitigation measures in the discussion of commercial shellfish operations on eelgrass.
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NPS Response to Concern Statement 36344:

The recent public notice regarding the draft Southern California Eelgrass Mitigation Policy has been included in the EIS under the heading “Laws and Policies” (page 327), and additional clarifying text regarding mitigation has been added to the impact assessment where relevant (please refer to the “Impacts on Eelgrass” section, pages 329-341). The action alternatives in the EIS assume compliance with all identified mitigation and management activities identified in the SUP and other permit requirements. Activities such as hand removal of accumulated debris from the shellfish growing operations underneath and adjacent to the racks are anticipated to reduce hard substrate within the potential eelgrass bed areas. In addition, the Draft California Eelgrass Mitigation Policy has been published for public comment. Currently that plan identifies that for direct impacts, a ratio of 1.2 to 1 is required. Analysis of restoration success within California estuaries north of the San Francisco Bay indicate that a ratio of 4.82 to 1 is required to meet the mitigation level (see Law and Policies under Eelgrass impact analysis, chapter 4). Under the proposed action alternatives, consultation with the National Marine Fisheries Service will be conducted on documented activities and direct and indirect impacts to eelgrass.

Concern Statement 37197

A commenter stated that impacts on eelgrass are understated in the EIS.

NPS Response to Concern Statement 37197:

Impacts to eelgrass are considered in the context of intensity definitions established for this EIS. Potential impacts to eelgrass from propeller scarring, tunicate and algae overgrowth, boat wake erosion, effects on wildlife habitat, and displacement from infrastructure are all considered, and effects have been interpreted at the localized scale described in the EIS. Impacts to eelgrass have been assessed accordingly.

Statements regarding the potential ecosystem benefits of cultivated filter-feeding bivalves, particularly with respect to water clarity and sediment nutrient enrichment, are based on an extensive review of scientific literature and relevant primary references, and are described in the appropriate context of environmental/ecological setting in the EIS. The EIS acknowledges localized ecosystem benefits provided by populations of filter-feeding bivalves, whether cultivated or native.

Statements regarding consistency with NPS management policies are included in the Conclusion discussion under each alternative in the chapter 4 eelgrass and benthic fauna sections.

The quantities used to estimate impacts to eelgrass are based on a point-in-time estimate using the best available information.

F11000 - Wildlife and Wildlife Habitat - Fish: Affected Environment

Concern Statement 36197

Commenters requested additional detail on how fish habitat is provided and/or enhanced by commercial shellfish infrastructure.

NPS Response to Concern Statement 36197:

Text has been modified to provide additional detail regarding structure-oriented species. Results and conclusions of the fish study completed by Wechsler (2004) are presented, indicating that structure oriented fish species were found around oyster racks in Drakes Estero. The findings were included in the EIS and evaluated in the context that, while a shift in the fish community composition occurs near oyster racks, the racks are a type of artificial habitat which is not natural to Drakes Estero. Regardless of its

effect on the fish community, the continued maintenance of a non-natural community in Drakes Estero does not further the goal of NPS Management Policies 2006 to preserve and restore natural communities and ecosystems. Please refer to the “Fish” section of chapter 3 (pages 231-232).

FI2000 - Wildlife and Wildlife Habitat - Fish: Impact of Alternatives

Concern Statement 36195	A commenter requested additional detail on the beneficial impacts of commercial shellfish aquaculture on wild fish stocks.
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NPS Response to Concern Statement 36195:

The Final EIS includes a discussion of all relevant factors affecting fish resources within the project area, including the role of shellfish aquaculture. An analysis of the world’s oceans and fish stocks is beyond the scope of this EIS.

Concern Statement 36418	Commenters stated that removal of commercial shellfish infrastructure should not be considered a negative impact due to the habitat value provided by these structures.
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NPS Response to Concern Statement 36418:

Text has been modified to provide additional detail regarding structure-oriented species and species in the Groundfish Plan. Results and conclusions of the fish study completed by Wechsler (2004) are presented, indicating that structure oriented fish species were found around oyster racks in Drakes Estero. The findings were included in the EIS and evaluated in the context that, while a shift in the fish community composition occurs near oyster racks, the racks are a type of artificial habitat which is not natural to Drakes Estero. NPS *Management Policies 2006* for biological resource management (NPS 2006d, section 4.4 et seq.) states that “the National Park Service will maintain as parts of the natural ecosystems of parks all plants and animals native to park ecosystems.” Directives for maintaining native species include “preserving and restoring the natural abundances, diversities, dynamics, distributions, habitats, and behaviors of native plant and animal populations and the communities and ecosystems in which they occur; restoring native plant and animal populations in parks when they have been extirpated by past human-caused actions; and, minimizing human impacts on native plants, animals, populations, communities, and ecosystems, and the processes that sustain them” (NPS 2006d). Please refer to the “Impacts on Wildlife and Wildlife Habitat: Fish” section of chapter 4 (page 356).

Concern Statement 38565	A commenter requested that the EIS consider impacts on the Northern anchovy and Pacific sardine.
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NPS Response to Concern Statement 38565:

The fish study conducted by Wechsler (2004) in Drakes Estero reported the capture of only one northern anchovy, and no other data is available. Therefore, due to the limited data pertaining coastal pelagic species in Drakes Estero, the EIS states that it is unclear whether proposed actions under alternative A would benefit these species or their essential fish habitat. Please refer to the “Impacts on Wildlife and Wildlife Habitat: Fish” section of chapter 4 (page 359).

Concern Statement 40117	A commenter requested additional discussion of the adverse impacts of commercial shellfish operations on fish, including the following issues: -plastic debris -turbidity in the water column -depletion of nutrients by nonnative shellfish
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NPS Response to Concern Statement 40117:

The text of the Final EIS for each alternative was modified to include the possible impacts of shellfish operation debris on fish. Modified text informs the reader about debris fragments and effects related to ingestion, digestion, and entrapment of various fishes. Shellfish operation debris in Drakes Estero is evaluated in the context of the project limits for this EIS; and the modified text restates the current level of understanding as to the degree of shellfish operation debris pollution occurring in Drakes Estero, and the actions currently put in place to clean up debris from shellfish operations.

Impact analysis regarding motorboats and fish focuses on the effects of propeller damage in eelgrass as a means of habitat fragmentation. In the “Impacts to Eelgrass” section of chapter 4, the EIS acknowledges that “boat traffic can cause temporary increases in water column turbidity due to resuspension of sediments, resulting in an increase in turbidity that can reduce the depth to which sunlight penetrates the water column. Since sunlight is a requirement for photosynthesis, and plants must photosynthesize to add biomass, boat-induced turbidity can result in temporary reductions in photosynthesis and can stall or reverse biomass accumulation (Crawford 2002).” These temporary increases in water column turbidity, in combination with the higher tidal flushing in Drakes Estero, are not likely to have a measurable effect on the fish community in Drakes Estero; however, habitat fragmentation is a more measurable effect of motorboat propeller damage and the Final EIS references literature that shows the impacts on fish communities in similar environments.

Impact analysis regarding nonnative oysters and their effect on the food web and food availability for native fauna is presented in the “Impacts to Eelgrass” and “Impacts to Benthic Fauna” sections of chapter 4.

FZ1000 - Coastal Flood Zones: Affected Environment

Concern Statement 36200	Commenters question the term “flood zone” and the method used to estimate the flood zone.
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NPS Response to Concern Statement 36200:

FEMA states that not all areas subject to flooding are necessarily included on their Federal Flood Insurance maps. The FEMA Flood Control Study for Marin County (FEMA 2009) does not attempt to calculate the flood zone at Drakes Estero, and thus no flood zone was determined. While the DBOC onshore area is not mapped as a FEMA flood zone, it is known that flooding is a regular occurrence based on statements provided to the park by DBOC. In addition, an application was submitted by DBOC to repair structures at the onshore facilities damaged by flooding from a storm event in March 2011. DBOC categorized this flood event on March 20, 2011 as a “100 yr storm” in their letter to the California Coastal Commission dated February 27, 2012.

Due to the lack of any FEMA flood calculations/study for Drakes Estero, NPS elected to use FEMA flood zone results from nearby Bolinas Bay. The FEMA flood zone elevation for Bolinas Bay was analyzed against the known storm event which occurred in March 2011. The importance of the recent storm event is the ability to accurately measure the elevation of the evidence left behind by the recent

flood event through traditional land surveying techniques (i.e., field corroboration) and compare those elevations with the Point Reyes tidal gauge and Bolinas Bay FEMA flood zone elevation. A topographic survey conducted by a professional surveyor was completed in order to establish elevations of the physical evidence at the site for planning and to evaluate the extent of flooding. From this, NPS extrapolated that evidence across the entire onshore facilities to determine the estimated area of flooding from a major storm event. Any other method would conjure speculation about the effects of past flood events on the onshore facilities without any other physical evidence.

FZ2000 - Coastal Flood Zones: Impact of Alternatives

Concern Statement 36201	A commenter requested an evaluation of the recent storm event and flooding that occurred at the DBOC onshore facility in April of 2010 and any bearing that this event may have on the question of the susceptibility of this area to such events in the future.
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NPS Response to Concern Statement 36201:

The Point Reyes gauge data was evaluated for the month of April 2010. The highest reading for that month was 6.84 feet NAVD. No flood event was recorded during that month that exceeded the flood event cited in the EIS for March 20, 2011 of 8.12 feet. NPS presumes, therefore, that the commenter was referring to the flood event of March 2011 rather than the April 2010 date. See response to Concern ID 36200.

HS1000 - Wildlife and Wildlife Habitat - Harbor Seals: Affected Environment

Concern Statement 36202	Commenters requested additional description of harbor seal use of Drakes Estero and any additional factors influencing it, including elephant seals.
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NPS Response to Concern Statement 36202:

Harbor seal use of Drakes Estero is summarized in chapter 3 under the heading “Harbor Seals” (pages 232-234), on figure 3-5 (page 234), and also in chapter 4 under the heading “Impacts on Wildlife and Wildlife Habitat: Harbor Seals” (pages 369-382). Factors influencing the behavior of harbor seals within Drakes Estero have been reviewed by NAS (2009), Becker, Press, and Allen (2009, 2011), and also by the Marine Mammal Commission in their analysis and summary of mariculture effects on harbor seals in Drakes Estero (MMC 2011b). The elephant seal event that this comment is likely referring to was a point-in-time disturbance in 2003. The event was captured by the statistical analyses of Becker, Press, and Allen (2011), and further by additional statistical treatment described by the MMC (2011b). Because the elephant seal disturbance has been treated as an outlier (both statistically and in terms of harbor seal behavior), it is not appropriate to include this one event in characterizing the overall use of Drakes Estero by harbor seals. The Final EIS analysis instead relies on the summaries in the studies cited above, which have adequately accounted for this point-in-time occurrence.

Concern Statement 36360	Commenters requested that the fact that harbor seals habituate to non-threatening human activities be acknowledged.
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NPS Response to Concern Statement 36360:

No changes have been made to the text, as in their detailed reviews of this topic, neither the National Academy of Sciences (NAS 2009) nor the Marine Mammal Commission (2011) made this point with

respect to the harbor seal population in Drakes Estero. Further, the types of human activities alluded to in this comment are regulated. NPS *Management Policies 2006* (NPS 2006d, section 4.4.1) state that the NPS will maintain native plants and animals "preserving and restoring the natural abundances, diversities, dynamics, distributions..." Habituation to human activity is not consistent with this policy.

Note that in its technical review of the Draft EIS, the NAS (2012a) draws a distinction between "habituation" and "tolerance", the former indicating that seals have become accustomed to human activities, and latter suggesting that they simply "tolerate" human presence (but at some cost with respect to reduction in fitness, etc.). There was no clear direction on what this distinction means for the Draft EIS, as stated: "Harbor seals have been shown to co-occur with other human activities in San Francisco Bay and other regions (Suryan and Harvey, 1999; Grigg et al. 2002; 2004). However, no studies have yet demonstrated that this reflects habituation, rather than tolerance (Bejder et al. 2009). Thus, although harbor seals in Drakes Estero may have habituated to mariculture activities over the 80 years of farming in the Estero, it is equally plausible that they incur some fitness cost as a result of tolerating these mariculture activities."

HS2000 - Wildlife and Wildlife Habitat - Harbor Seals: Impact of Alternatives

Concern Statement 36203	Commenters requested additional detail regarding adverse impacts of commercial shellfish operations on harbor seals, including: -ongoing and potentially increasing disturbance -plastic debris
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NPS Response to Concern Statement 36203:

As stated in the response to Comment 253198 above, the Marine Mammal Commission (MMC) (2011b) report indicates that shellfish operation activity is correlated with seal behavior. This is summarized in the following from chapter 4 under the heading harbor seals (page 376): "Further, after examining individual disturbance records, MMC (2011b) concluded that, 'from time to time, mariculture activities have disturbed the seals. However, the data used in the analysis are not sufficient to support firm conclusions regarding the rate and significance of such disturbance' (MMC 2011b)."

Information on post-mortem results from dead pups recovered from the mouth of Drakes Estero has been added to chapter 4 under alternative A impacts discussion (page 373).

As described on page 373 of the Final EIS, commercial shellfish operations in Drakes Estero release marine debris into the environment, which can be ingested by harbor seals (Laist 1987; Williams, Ashe, and O'hara 2011).

Concern Statement 36204	Commenters requested that additional data be provided to support the adverse impacts on harbor seals from commercial shellfish operations.
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NPS Response to Concern Statement 36204:

The results of the recent Marine Mammal Commission study (MMC 2011b), which focused on the effects of shellfish operations on harbor seals in Drakes Estero, have been cited and summarized in the EIS. Where appropriate, text regarding impacts to harbor seals has been amended to reflect the findings of the MMC (2011b) study (please refer to pages 370-376).

Concern Statement 36205	Commenters requested additional detail regarding beneficial impacts of commercial shellfish operations on harbor seals, including protection of harbor seals from recreational visitors.
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NPS Response to Concern Statement 36205:

NPS is responsible for continued enforcement of the closure of Drakes Estero to recreational boat traffic during harbor seal pupping season. Under alternative A, gate installation would assist NPS in this enforcement. Though the recreational boating closure during pupping season was initiated to minimize impacts to harbor seals, impacts associated with kayak use during the pupping season have still been observed (e.g., NPS and volunteer monitoring reports reviewed in MMC [2011b]). The proposed gate installation under alternative A, and increased enforcement with alternatives B, C, and D, would alleviate some observed impacts to harbor seals.

Concern Statement 36394	Commenters requested that the findings of the Marine Mammal Commission report be acknowledged.
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NPS Response to Concern Statement 36394:

The results of the Marine Mammal Commission study (MMC 2011b), which focused on the effects of shellfish operations on harbor seals in Drakes Estero, have been cited and summarized in the EIS. Where appropriate, text regarding impacts to harbor seals has been amended to reflect the findings of the MMC (2011b) study (please refer to pages 370-376).

Concern Statement 36398	Commenters requested that impacts on harbor seals from commercial shellfish operations be compared to recreational activities.
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NPS Response to Concern Statement 36398:

Kayaking in Drakes Estero is not part of the actions proposed in this document. It is, however, a past, present, and reasonably foreseeable action that has the potential to impact resources addressed in the EIS; therefore, these impacts are addressed in the “Cumulative Impacts” section. The EIS assumes compliance with kayak use restrictions in Drakes Estero. For more detail on kayaking and visitor use, see discussion in the “Impact Topic: Visitor Use and Experience” section of chapter 3 (pages 267-269), and the response to Concern ID 36205. Also, note that DBOC is the only entity that is allowed in Drakes Estero during pupping season. Any kayaking occurring during this time is in violation of NPS regulations.

Concern Statement 36399	Commenters requested additional detail regarding the impacts of noise on harbor seals.
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NPS Response to Concern Statement 36399:

Available literature on noise disturbance related to marine mammal activity indicates that sound can affect seal behavior. As stated in MMC (2011b), “A seal may detect an activity using its visual, acoustic, or, possibly, olfactory senses. The sensory cue is an important consideration in the study of disturbance, but is difficult to determine because the seals live in both air and water and likely can detect both visual and acoustic stimuli over some distance (e.g., hundreds of meters). Although vision may be the primary sense for a seal hauled out on land, sound can travel efficiently through air and harbor seals on land likely depend on both senses to detect what they perceive to be potential threats. When in the water, they may depend primarily on sound to detect and assess more distant threats and vision to detect and assess closer threats. Sound levels have not been assessed in the estuary and the sound fields are likely to be complex given the shallow and variable bathymetry of the estuary and the substantial changes in water depth with the rising and falling tides.” Also, although some research – such as Acevedo-Gutierrez and Cendejas-Zarelli (2011) – has

reported dB levels for studies that found human-induced noise creating a disturbance to harbor seals, no attempt was made to determine a “threshold” for disturbance from sound levels (either in-air or underwater) measured in dB. The NMFS uses a threshold level of 90 dBA to assess a “Level B harassment” for harbor seals (i.e., resulting in behavioral change), but NMFS criteria for acoustic thresholds under the MMPA are currently under revision. Due to the uncertainty of these thresholds, no seal-specific map of noise-related impacts was created. Four maps based on human hearing is included in the “Impacts on Soundscapes” section of chapter 4 on pages 451-454 (figures 4-1, 4-2, 4-3, and 4-4.).

The Final EIS notes that DBOC operations may cause underwater noise, which may impact marine mammals in Drakes Estero (page 368). No information regarding site specific underwater noise is available. As stated on page 368: “Studies in west coast estuaries suggest that motorized watercraft are a greater threat for harbor seal disturbance relative to other human activities (such as pedestrian tourists, canoeists, or kayakers) (Suryan and Harvey 1999; Calambokidis et al. 1991). Further, there may be impacts on harbor seals related to underwater sounds produced by DBOC based on previous research on other marine mammals (NAS 2003).” As stated in the NAS (2012a) summary of its Draft EIS technical review, “There are ample peer-reviewed papers on the short-term impacts of underwater noise on marine mammals at an individual level for a few species, but little scientific evidence is available to determine the effects of noise on marine mammals at the population level.”

Concern Statement 36407	A commenter requested additional detail regarding relevant law and policy related to harbor seals.
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NPS Response to Concern Statement 36407:

Text has been revised to clarify that alternative A is consistent with relevant NPS laws and policy. Text has been added to define how alternative A would be consistent with the MMPA. See page 375 of the Final EIS.

HS2100 - Harbor Seals: Use of Photographs

Concern Statement 36206	Commenters stated that the photographs taken of harbor seals be included as evidence of impacts or lack thereof. Otherwise, a justification as to why the photographs are not used should be provided.
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NPS Response to Concern Statement 36206:

Between spring 2007 and spring 2010 more than 250,000 digital photographs were taken from remotely deployed cameras overlooking harbor seal haul-out areas in Drakes Estero. The photographs were taken at one minute intervals. These photographs are posted on the NPS web site at http://www.nps.gov/pore/parkmgmt/planning_reading_room_photographs_videos.htm

Based on public comments, the NPS initiated a third-party review of the photographs with the U.S. Geological Survey (USGS), in consultation with a harbor seal specialist with the Hubbs-Sea World Research Institute. The USGS assessment (Lellis et al. 2012) focused on the 2008 harbor seal pupping season, when more than 165,000 photos were collected from two sites overlooking Drakes Estero between March 14, 2008 and June 23, 2008. The results of this review are provided in the USGS report, *Assessment of Photographs from Wildlife Monitoring Cameras in Drakes Estero, Point Reyes National Seashore* (Lellis et al. 2012) (see also discussion under chapter 1 pages 33-34). Additional information about the USGS assessment is presented under the impact topic “Wildlife and Wildlife Habitat: Harbor Seals” in chapter 4.

HS2200 - Harbor Seals: Use of Becker 2011

Concern Statement 36207	Commenters stated that the Becker 2011 reference, as reviewed by the Marine Mammal Commission, may not be a reliable source of information for impacts of commercial shellfish operations on harbor seals.
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NPS Response to Concern Statement 36207:

The results of the recent Marine Mammal Commission study (MMC 2011b), which focused on the effects of shellfish operations on harbor seals in Drakes Estero, have been cited and summarized in the EIS. Becker, Press, and Allen (2011) was reviewed in MMC (2011b), and conclusions thereto have been referenced in the EIS. As referenced in the EIS in the chapter 4, harbor seals impact analysis (page 371-376), MMC (2011b) concluded that the research of Becker, Press, and Allen (2011) demonstrated a negative correlation between shellfish operations and seal use of haul-out sites, but noted that this correlation did not necessarily imply causation. As a component of their review, MMC (2011b) conducted some additional statistical analyses based on recommendations from an independent statistician. This included consideration of other potential influences on seals such as environmental conditions, and the impacts of an aggressive seal at a nearby colony outside of Drakes Estero. After reviewing the results of these additional analyses, the MMC concluded that their results "...continue to support the hypothesis that oyster harvest...is at least correlated with seal use of the different haulout sites within Drakes Estero" (MMC 2011b).

OP1000 - NPS Operations: Affected Environment

Concern Statement 36209	Commenters requested clarification regarding the amount of money that NPS has spent managing commercial shellfish operations in Drakes Estero.
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NPS Response to Concern Statement 36209:

The maintenance of the road and parking area adjacent to DBOC are outside of any existing permits or the RUO held by DBOC, and are in the proper authority and jurisdiction of the NPS. Ongoing maintenance of the access road is the responsibility of the NPS and is conducted consistent with maintenance of all other NPS road facilities.

With regard to the administrative expenditures, the NPS is required to be responsive to any requests under the Freedom of Information Act (FOIA). Since 2007, the NPS has received more than 100 FOIA requests on this topic. This workload includes the collection, collation, review of records responsive to various FOIA requests regarding this topic. The commenter suggests that this level of effort will be reduced under issuance of a permit consistent with the action alternatives. The impact analysis for park operations in this EIS assumes that the level of administrative effort would be reduced under all alternatives considered in the EIS.

The NPS has responded to previous FOIA requests related to expenditures associated with planning and evaluation associated with the current planning process. The responses to these requests are posted at http://www.nps.gov/pore/parkmgmt/planning_reading_room.htm.

OP2000 - NPS Operations: Impact of Alternatives

Concern Statement 36210	Commenters requested clarification regarding how the full-time equivalent (FTE) staff were estimated and requested that recalculation be considered.
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NPS Response to Concern Statement 36210:

The changes to staffing levels (both FTE and part-time) described in the EIS reflect anticipated levels of staffing for specific activities including invasive species monitoring and management and differing levels of planning, oversight and enforcement with respect to the action and no action alternatives. These estimates are based on levels of effort required for similar tasks and current staff workloads. The “Impacts on NPS Operations” section of chapter 4 (pages 506-514) has been revised to clearly identify the number of additional FTE or part-staff that would be needed for each component of the no action and action alternatives, as applicable.

Concern Statement 36211	A commenter requested that the EIS acknowledge the public service provided by DBOC.
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NPS Response to Concern Statement 36211:

While DBOC’s efforts to cleanup aquaculture-related marine debris from past oyster operations are certainly appreciated by the NPS, they are also a requirement of the 2007 Cease and Desist order issued by the CCC and a requirement section 7(b) of the existing SUP.

The regular human presence in Drakes Estero cannot be regarded as a public service in an area designated as potential wilderness, because it is inconsistent with the characteristics of a wilderness. As described in the “Impact Topic: Wilderness” section of chapter 3, wilderness is defined by PL 88-577, in part as, “[a]n area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation.”

SE1000 - Socioeconomic Resources: Affected Environment

Concern Statement 35963	<p>Commenters requested additional details and/or revisions regarding the existing socioeconomic conditions. The following issues were raised:</p> <ul style="list-style-type: none"> -current NPS lease amount -shellfish production numbers and their calculation -editorial corrections -jobs provided by DBOC -taxes paid by employees -secondary economic contributions -quantification of DBOC’s economic contribution
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NPS Response to Concern Statement 35963:

The Final EIS has been revised to address these comments as follows:

The current DBOC lease is not based on the income of the operation but rather on the value of the onshore SUP area. As described in the introduction to “Chapter 1: Purpose of and Need for Action” section 124 of PL 111-88 specifies that, “extended authorization [of DBOC operations] 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. As such, and as described in “Chapter 2: Alternatives” if DBOC is issued a new permit, the operation would be required to pay the United States the fair market value of both onshore and offshore portions of DBOC.

The NPS has been working with the California Department of Fish and Game to identify the most appropriate approach for comparing and presenting shellfish production data in the EIS. Each operation provides data to the Department of Fish and Game differently, making direct comparisons difficult. Since release of the Draft EIS, the agencies have continued to work together to refine the data. It should be noted that NPS developed the socioeconomic analysis presented in the Final EIS using CDFG production data as presented in the Draft EIS and including 2011 production. The shellfish production numbers use the Proof of Use reported information including the production basis of 100 oysters per gallon and 8.5 pounds per gallon. In August of 2012, after NPS had completed this analysis, including IMPLAN modeling, CDFG notified NPS that in May of 2012 they modified their methodology for estimating some of the state shellfish production data. NPS acknowledges these changes, however, because this data was received after completion of the socioeconomic analysis, and is not anticipated to result in significant changes to NPS findings or conclusions, it has not been incorporated in the Final EIS. Revised shellfish production numbers are presented in the “Socioeconomic Resources” sections of “Chapter 3: Affected Environment” and “Chapter 4: Environmental Consequences” of the Final EIS.

Editorial revisions, including those identified in the public comments, have been incorporated throughout the Final EIS.

The “Socioeconomic Resources” section of “Chapter 3: Affected Environment” provides information about DBOC employment, as reported by DBOC. During the preparation of the EIS, although requested by NPS, DBOC did not provide information pertaining to the taxes paid by DBOC and its employees. Therefore, this information has not been included in the EIS. Similarly, data is not readily available to determine secondary economic contributions associated with DBOC, such as ancillary businesses supported by DBOC as a tourist location or as a purchaser of equipment.

Concern Statement 35964	Commenters requested an estimate of the socioeconomic value of ecologic services provided by DBOC.
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NPS Response to Concern Statement 35964:

In order to provide an accurate estimate of the socioeconomic value of environmental services provided by DBOC's nonnative, commercially grown shellfish species, a complete ecosystem valuation study would need to be completed. A site-specific study of this nature would require analyses of the linkages between ecosystem structure and functions (ecosystem analysis) that would then be translated into economic values (economic analysis). This type of study is very costly and time consuming, and not easily transferable, thus making studies completed in other areas potentially not applicable to Drakes Estero. A study such as this has not been completed for Drakes Estero, as noted by NAS:

"The ecosystem resources embodied by Drakes Estero are fairly well understood and are described in the previous chapters (I through VII) of this report. The ecosystem services provided by the specific resources in Drakes Estero have not been quantified in either ecological or economic terms" (NAS 2009).

In addition, as described in pages 247-252 of the Final EIS, the physiographic characteristic of Drakes Estero, coupled with few human-caused disturbances in a relatively small watershed, are the overriding properties of Drakes Estero affecting water quality. Bivalves do capture pollutants as their food source, and can influence water quality in some estuaries. However, data suggests that Drakes Estero is a unique case where ceasing shellfish operations, and thus removing the functional ability of the oysters to filter water within Drakes Estero, is not likely to result in any appreciable differences in water quality. Therefore, the economic value of

DBOC, related to nutrient sequestering and water filtration is not likely to be measurable.

For purposes of this EIS, socioeconomic resources were described using best available information and methodologies. For more information related to socioeconomic resources, please see pages 269-283 of the Final EIS.

SE2000 - Socioeconomic Resources: Impact of Alternatives

Concern Statement 35970	Commenters questioned the use of varying geographic scales to describe socioeconomic impacts.
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NPS Response to Concern Statement 35970:

The Draft EIS analyzed socioeconomic impacts at a local (Inverness CDP), regional (Marin County), and statewide (for shellfish production only) scale; and in consideration of the impacts associated with each scale, provided one overall impact. To clarify the socioeconomic impacts associated with each level, “Chapter 4: Environmental Consequences” in the section “Impacts on Socioeconomic Resources” of the Final EIS has been revised to include conclusion statements specific to the local, regional, and statewide impacts. The methodology discussion in this section also has been revised to reflect this change. These geographic scales have been selected in consideration of what is most appropriate for the components of the socioeconomic environment and for consistency with available data. Data for many of the components of the socioeconomic environment, including housing, population, and employment are reported at a very localized level, or at the county or state level. There is limited data specific to West Marin. Therefore, West Marin was not considered a suitable scale for comparative evaluation. Any impact to socioeconomic resources that would occur within West Marin would likely be magnified in the analysis of impacts to the Inverness CDP, which is much more localized. West Marin was mentioned in the methodology of the Draft EIS for context, but has been removed from the Final EIS to reduce confusion about the scale of the analysis.

Shellfish operations are dispersed throughout California and not concentrated within one county or region. Therefore, evaluating operations at a scale smaller than the state level would distort the role of that operation in the larger market. In addition, much of the available data related to the shellfish market is provided at a state level. As such, it was determined that the state level was the most appropriate scale for the evaluation of shellfish production. The NPS acknowledges that impacts to the shellfish market associated with DBOC would be greater at the county level than the state level. For comparison, shellfish production data has been incorporated into the socioeconomic resources sections of “Chapter 3: Affected Environment” and “Chapter 4: Environmental Consequences” of the Final EIS. However, the overall conclusions for impacts to socioeconomic resources did not change.

Concern Statement 35971	<p>Commenters requested additional detail regarding the impacts on socioeconomic resources under alternative A, including:</p> <ul style="list-style-type: none"> -consideration of current economic conditions -removal of California's last cannery -loss of jobs and housing -loss of shellfish production and cost of replacement -loss of local income and tax revenue -exacerbation of national seafood deficit -loss of revenue provided by visitor attraction -consumers' loss of local, natural product and source of protein
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NPS Response to Concern Statement 35971:

To address comments on impacts to socioeconomic resources, additional detail has been incorporated into “Chapter 3: Affected Environment” and “Chapter 4: Environmental Consequences” of the Final EIS. Specifically, the socioeconomic resource sections in each chapter have been revised to acknowledge the nation’s current seafood deficit. Additionally, information about the impact of DBOC payroll and visitor spending on the local and regional economy has been incorporated into the socioeconomic resource discussions in chapter 3: and chapter 4.

In addition, the socioeconomic analysis has been updated in the Final EIS to include DBOC’s contribution to the overall local economy. As described on pages 281-282 of the Final EIS, an input-output methodology employing IMPLAN software has been used to estimate the economic impact of DBOC operations on the Marin County economy. IMPLAN was chosen because of its ability to construct a model using data specific to Marin County while maintaining rich detail on impacts for hundreds of industrial sectors. In addition to being widely used in regional economic analysis, the model and its methodology have been extensively reviewed in professional and economic journals. IMPLAN software also was used to calculate the economic impacts of the Seashore on local communities. Input-output models, such as IMPLAN, map the linkages of inter-industry purchases and economic output within a given region.

Impacts to local food sources were considered during development of the EIS but were dismissed as an impact topic because other proteins, such as beef, poultry, or finfish, also are produced in the vicinity of DBOC. In addition, other sustainable shellfish operations, such as the Tomales Bay Oyster Company and the Hog Island Oyster Company, both of which are in Tomales Bay proximal to DBOC (approximately 15-20 driving miles), contribute to the local oyster and clam supply. See pages 43-44 in “Chapter 1: Purpose of and Need for Action” in the section “Issues and Impact Topics” for the detailed dismissal of this impact topic.

The EIS acknowledges that DBOC operates the last onsite oyster cannery in California. The loss of this oyster cannery would not be likely to result in a noticeable impact to socioeconomic resources, beyond the impacts associated with the loss of DBOC. Identifying potential replacement canneries is outside the scope of this EIS.

The cost to replace DBOC is too speculative to estimate within the EIS. Replacement would not be the responsibility of the NPS and could occur anywhere within the state. As noted above, the Final EIS acknowledges that local growers state that they cannot accommodate the loss of production associated with closing DBOC (see response to Concern 35976).

As discussed in “Chapter 3: Affected Environment” in the section “Impact Topic: Water Quality” the California Department of Public Health, Division of Drinking Water and Environmental Management Preharvest Sanitation Unit requires DBOC to periodically collect and analyze meat and water samples. This sampling helps to ensure food safety and restricts shellfish harvesting during periods when fecal coliform or marine biotoxin levels may temporarily exceed existing standards. Water and meat sampling is not a service uniquely provided by DBOC. Therefore, the water and meat sampling conducted at DBOC is not considered in chapter 4 of the EIS.

Current economic trends are considered as part of the cumulative impacts discussion in the “Methodology for Assessing Impacts” section of chapter 4, and associated impacts are evaluated in the “Impacts to Socioeconomic Resources” section of the same chapter. Impacts associated with the loss of jobs, housing, shellfish production, and visitor attraction also are evaluated in the socioeconomic impacts section of chapter 4 of the EIS.

Concern Statement 35976	Commenters stated that jobs and production lost at DBOC could not be replaced by other growers such as Tomales Bay.
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NPS Response to Concern Statement 35976:

The impacts to socioeconomic resources discussed in “Chapter 4: Environmental Consequences” of the Draft EIS are not based on an assumption that other shellfish operations in the area (or within California) could absorb jobs and/or production if operations at DBOC cease. No such assumptions were made in the Draft EIS. The Final EIS has been revised to clarify this and to note that area growers, such as Tomales Bay have stated that they cannot accommodate the loss of DBOC. However, the overall conclusions in the Draft EIS did not change. It should be noted however, that production levels in other parts of the state have increased at a greater rate than production increases in Drakes Estero. For example, in 2010, DBOC production increased by 28 percent over 2009 production levels, during this same period, the California oyster market increased 43 percent (CDFG 2011e). This pattern is also apparent within Marin County. Between 2007 and 2008 DBOC’s share of the Marin County Pacific oyster production was 69 percent (CDFG 2011e). Due to increased production in Tomales Bay in 2008 and 2009, DBOC’s share of the county oyster and shellfish markets was closer to 50 percent between 2009 and 2011 (CDFG 2011e). For consistency, the National Park Service relied on information from the California Department of Fish and Game data related to current production levels and did not contact each individual shellfish operation in the area.

Concern Statement 35977	Commenters stated that impacts of alternative A on socioeconomic resources were overstated in the EIS.
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NPS Response to Concern Statement 35977:

NPS recognizes that during the latter part of Johnson Oyster Company ownership and during the first couple years of DBOC ownership (through 2006), oyster production within Drakes Estero was significantly lower than current conditions. Information has been added to the socioeconomic resources section in “Chapter 3: Affected Environment” of the EIS to acknowledge and clarify this. However, because economic conditions vary, it cannot be assumed that alternative A would result in conditions similar to when shellfish production in Drakes Estero was lower. As described in the socioeconomic resources sections of chapters 3 and 4 of the EIS, the evaluation of impacts to socioeconomic resources was not limited to the local, regional, and/or statewide shellfish market. The analysis also included a consideration of impacts to other socioeconomic conditions such as employment, taxes, revenue for other types of businesses, and changes to demographic conditions (i.e., population, housing).

SP1000 - Special-Status Species: Affected Environment

Concern Statement 36215	Commenters requested that the EIS state that Drakes Bay is part of the Leatherback Conservation area created by the Turtle Island Restoration Network's Sea Turtle Restoration Project.
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NPS Response to Concern Statement 36215:

The EIS considered the designated critical habitat of the leatherback sea turtle, which is a protected resource under the ESA. The project/action area considered in the EIS is located within Drakes Estero. The designated critical habitat for the leatherback sea turtle was reviewed by NPS and NMFS and Drakes Estero is not part of the turtle’s critical habitat area. Drakes Bay is part of the turtle’s designated critical habitat area, but is located outside of the project/action area.

SP2000 - Special-Status Species: Impact of Alternatives

Concern Statement 36220	Commenters questioned whether or not species were present within the study area and stated that the EIS should not include impacts for species that are not present.
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NPS Response to Concern Statement 36220:

After further consultation with relevant agencies, the “Special-Status Species” sections have been modified using the best available data to retain two ESA protected resources, the central California Coho salmon critical habitat and the central California steelhead. The Coho salmon’s designated critical habitat is located within the project/action area. Steelhead occur within the Drakes Estero watershed and therefore use Drakes Estero during migration. The text of the EIS has been modified to clarify foraging behavior of Coho salmon and steelhead as it pertains to eelgrass.

Upon further review of available data and additional consultation with relevant agencies, the determination of less than minor impacts has been identified for Myrtle's silverspot butterfly, California red-legged frog, leatherback sea turtle, California least tern, and western snowy plover and/or their critical habitat. As a result, these species were dismissed from further analysis in the Final EIS. See pages 38-39 of the Final EIS for the dismissal justification.

Concern Statement 36221	Commenters requested clarification as to why the EIS finds adverse impacts on special-status species when the 1998 EA for improvements at this site did not.
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NPS Response to Concern Statement 36221:

The relationship of the 1998 EA to the current EIS is described on page 66 of the Final EIS. The 1998 EA examined the potential impacts associated with the proposed improvements at the onshore portions of Johnson Oyster Company. Per the EA “No special-status species, such as threatened or endangered plants or animals, are found in the project area. Brown pelicans, brandt geese, and peregrine falcons are known to occur in the vicinity of the project area” (NPS 1998a, page 10). However, per informal consultation with the FWS and other relevant agencies during scoping of the EIS, potential species and/or their critical habitat were identified within the project area (which includes both onshore and offshore areas). The initial analysis of potential impacts considered that negligible to minor impacts may occur for several species and/or their critical habitat (Myrtle’s silverpot butterfly, California red-legged frog, central California Coho salmon, central California steelhead, leatherback sea turtle, western snowy plover, and the California least tern. Upon further review of available data and additional consultation with relevant agencies, the determination of less than minor impacts have been identified for Myrtle's silverspot butterfly, California red-legged frog, leatherback sea turtle, California least tern and western snowy plover or their critical habitat. Therefore, the EIS has been revised to only consider in full detail the impacts on the central California Coho salmon critical habitat and the central California steelhead in the special-status species and water quality sections.

Concern Statement 36222	A commenter requested additional detail on the potential impacts of plastic debris on leatherback sea turtles.
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NPS Response to Concern Statement 36222:

Despite recent changes, the designated critical habitat for the leatherback sea turtle was reviewed by NPS and NMFS and Drakes Estero is not part of the turtle’s critical habitat area. In addition, neither leatherback

sea turtles nor their prey species are known to occur in Drakes Estero. As a result, the text of the EIS has been modified excluding the leatherback sea turtle and its critical habitat from the special-status species section. Impacts related to marine debris are discussed under the relevant impact topic sections.

<p>Concern Statement 37124</p>	<p>Commenters requested additional detail regarding impact of commercial shellfish operations on special-status species, including:</p> <ul style="list-style-type: none"> -additional species -assumption that more eelgrass is a beneficial impact -consideration of potential future habitat
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NPS Response to Concern Statement 37124:

As described in chapter 3 (pages 239-240) and chapter 4 (pages 400-401), the USFWS was contacted for a list of threatened and endangered species and designated critical habitats that may be within the project area. Information on possible threatened or endangered species, candidate species, and species of special concern was also gathered by the NPS from past studies and plans. NPS determined that none of the federally listed plant species in the USFWS results have potential to be affected by the proposed actions within the project area. Further, NPS determined that seven of the federally listed animal species have potential to exist within the project area. As described in chapter 1 (pages 38-39), five of the federally listed animal species were dismissed from further analysis in the EIS due to a lack of designated critical habitat in the project/action area, unconfirmed presence of the species in the project/action area, or the potential for less than minor impacts on the species and/or their critical habitat. These include Myrtle's silverspot butterfly, California red-legged frog, leatherback sea turtle, western snowy plover, and California least tern.

Therefore, the EIS text has been modified to only include the central California Coho salmon critical habitat and the central California steelhead in the special-status species section. The level of impact for these species has not been modified. Long-term minor impacts are appropriate for the Coho salmon critical habitat and steelhead based on the minor impacts to habitat, including (but not limited to) eelgrass. The text of the EIS has been modified to clarify the link of eelgrass impacts to impacts for fish. Further, additional text has been included to describe the effects on salmonids of copper leachates released from treated wood into aquatic environments. This pertains to the potential for repair and replacement activities in 2013 and 2014, as well as annual maintenance requirements.

Based on the best available information and additional consultation with relevant agencies, despite the presence of freshwater and estuarine systems adjacent to the project/action area, the California red-legged frog and its critical habitat would not be impacted by the alternatives as proposed in the EIS. Critical habitat is evaluated based on what is currently present, and past impacts are not incorporated into such evaluations. The frogs do occur in areas adjacent to the project area and in habitat areas adjacent to Home Bay; however these areas are not expected to be affected by the alternatives. Therefore, the determination in the EIS is considered less than minor and is dismissed from further analysis. As a result, the text of the EIS has been modified and the California red-legged frog has been removed from the special-status species section. Future restoration efforts are not considered as part of the proposed action for this EIS; therefore the impact of restoration on California red-legged frog and its critical habitat is not addressed.

The Final EIS was reviewed to ensure that marine debris was discussed under all relevant impact topics. As a result, text regarding the introduction of plastic debris from the shellfish operations into the marine ecosystem was added to the discussion of impacts of DBOC operations on special-status species in chapter 4. There are no specific data available on impacts of marine debris in Drakes Estero that would satisfy the requirements for primary references as specified in the chapter 1 section "References Used For Impact Analysis"; however, some research in other types of marine settings have studied plastic contaminants in the marine environment. These have been incorporated into the text where relevant. The modifications to the Final EIS also acknowledge the history of plastic debris in Drakes Estero and reiterate that debris cleanup is a requirement of sections 3.2.2 and 3.2.3 of the 2007 Cease and Desist

Consent Order and section 7(b) of the 2008 SUP and is the responsibility of DBOC. Additional detail regarding removal of plastic debris is provided in chapter 2 of the EIS.

Concern Statement 37125	A commenter requested that use of specific references related to the leatherback sea turtles and western snowy plovers be reviewed and/or revised.
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NPS Response to Concern Statement 37125:

Upon further review of available data and additional consultation with relevant agencies, the determination of less than minor impacts has been identified for leatherback sea turtle, California least tern, and western snowy plover or their critical habitat. Therefore, these species have been moved to the “Impact Topics Considered but Dismissed from Further Analysis” section of chapter 1. See page 40 for the justification for dismissal.

SS1000 - Soundscapes: Affected Environment

Concern Statement 36223	<p>Commenters requested alternate descriptions of the soundscape within the project, including:</p> <ul style="list-style-type: none"> -use of the L_{eq} instead of the L_{50} -use of additional measurements taken on site -clarification of the term “high ambient sound”
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NPS Response to Concern Statement 36223:

The text in chapter 3 describing the soundscape within the project area has been revised in the Final EIS to discuss these metrics in relation to L_{eq} . L_{eq} is unsuitable as an estimate of background conditions because its value is most strongly affected by the loudest sound events. The L_{50} metric provides a limited perspective of varying sound levels; therefore, the L_{90} metric was included to offer a more complete characterization of the background levels that could act to mask DBOC noise sources. The use of L_{50} to evaluate conditions in units of the national park system has been a standard practice for more than 20 years, which arose from collaborative work between NPS, the John A. Volpe National Transportation Systems Center, and industrial consulting firms HMMH and Wyle Laboratories, Inc. The use of L_{90} also is recommended by ANSI Standard 12.9-1.

Measurements taken on site were considered during establishment of a range of possible noise levels associated with DBOC operations. Discussion of these measurements are included in the “Impact Topic: Soundscapes” section of chapter 3 of the Final EIS.

Use of the term “high ambient sound” was revised.

SS2000 - Soundscapes: Impact of Alternatives

Concern Statement 36224	<p>Commenters requested additional detail and consider alternate methods of analyzing the impacts on the project area soundscape. Issues include:</p> <ul style="list-style-type: none"> -consideration of the noise emitted by DBOC employee radios -consideration of the noise emitted by cars -consideration of noise emitted by planes -consideration of noise control methods -coordination with DBOC to reduce noise -use of a different noise model -dissipation of noise
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NPS Response to Concern Statement 36224:

The Final EIS mentions radios as an anecdotal nuisance for visitors in the “Impacts on Visitor Experience and Recreation” section of chapter 4, and it is mentioned qualitatively as a source of human-caused noise in the “Impacts on Soundscapes” in chapter 4. No specific information is available on the frequency of use or volume; therefore, the impact analysis regarding soundscapes focuses instead of the major sources of noise related to DBOC operations.

Although cars do contribute noise to study area, the potential noise contribution by these vehicles could vary greatly depending on the vehicle. There are no data available on the frequency of vehicle use at the site. Therefore, as above, use of automobiles at the site is acknowledged but is not included in the quantitative analysis of primary noise-emitting equipment.

Additional detail regarding the proportion of sound contributed by overflights to the soundscape as reported in the Volpe 2011 report is included in the cumulative impact analysis sections of the “Impacts on Soundscapes” of chapter 4 of the Final EIS. The Volpe report estimates that the change in median sound levels due to all aircraft at the PORE004 site is small: 1.4 dBA in summer and 1.7 dBA in winter. According to recent data collection, overflights account for 13 percent (in the summer) to 17.6 percent (in the winter) of audible sounds at the PORE004 site located on the bluff of Drakes Estero (Volpe 2011). Within the study area, the contribution of noise to the soundscape from DBOC’s operations to the cumulative impact on soundscapes is considered appreciable.

Under alternative D, NPS would work with DBOC under alternative D to ensure that onshore sound-generating equipment would be housed within new buildings constructed or otherwise enclosed to the extent practicable.

Regarding the method of analysis, additional data was reviewed and included in the analysis (including an additional review of the data collected for the Volpe 2011 report as well as discussion of data collected on site by Environ in 2011). Additional suggestions regarding more detailed and precise modeling were not implemented. It is very unlikely that more detailed knowledge of the timing and location of equipment usage would substantially alter the analysis or conclusions presented in the Final EIS. The current analysis assumes that DBOC activities generate noise for four hours a day and that the quietest piece of onshore equipment spreads noise well into the congressionally designated potential wilderness in Schooner Bay.

VE1000 - Visitor Experience and Recreation: Affected Environment

<p>Concern Statement 36226</p>	<p>A commenter stated that services offered by DBOC should be considered a visitor service.</p>
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NPS Response to Concern Statement 36226:

DBOC does not operate within the pastoral zone at Point Reyes National Seashore. “Visitor services” are public accommodations, facilities and services that are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located that are provided to park visitors for a fee or charge by a person other than the National Park Service (16 USC 5951(b); 16 USC 5952; 36 CFR 51.3).

The primary focus of DBOC’s operation is commercial sale of shellfish to restaurants and the wholesale market outside the park. Those services are not principally for the public use and enjoyment of Point Reyes National Seashore. Consequently, they do not qualify as a “visitor service” for purposes of a concession contract. Even though DBOC’s activities do not qualify as a visitor service, additional

analysis has been added to the Final EIS to address the experience of those individuals who come to the Seashore for the primary purpose of visiting DBOC's facility

<p>Concern Statement 36430</p>	<p>Commenters requested additional detail on the services provided to park visitors at DBOC be included in the EIS.</p> <ul style="list-style-type: none"> -cultural/interpretive/educational experience -tours -bathrooms -telephones -Cardiopulmonary Resuscitation (CPR) and first aid -Americans Disabilities Act (ADA) accessible facilities -sampling -area clean up
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NPS Response to Concern Statement 36430:

The section "Impact Topic: Visitor Experience and Recreation" in "Chapter 3: Affected Environment" of the Final EIS has been revised to incorporate additional information about the visitor experience and recreational opportunities provided at DBOC. In particular, information about the educational tours/opportunities and other experiences provided to visitors at DBOC has been incorporated into chapter 3 of the Final EIS. These experiences include eating/buying oysters and education about the history of agriculture and aquaculture in Point Reyes National Seashore, the benefits of oysters (both as a food source and within the coastal ecosystem), and sustainable farming. The Final EIS also has been revised to note that DBOC provides restroom and telephone facilities for visitors is ADA accessible, as required by law, and has staff trained in CPR and first aid.

The "Impact Topic: Visitor Experience and Recreation" section of chapter 3 also has been revised to include a discussion of the cultural experience provided at DBOC related to the preservation of local traditions. However, it should be noted that, as described in the section "Issues and Impact Topics Considered but Dismissed from Further Analysis" in chapter 1 the California State Historic Preservation Officer has concurred that none of the facilities associated with DBOC's operation are eligible for listing on the National Register of Historic Places. In addition, as also discussed in the "Impact Topics Dismissed from Further Analysis" section, no eligible cultural landscapes have been identified in the project area.

Impacts to the DBOC visitor experience have been incorporated into the "Visitor Experience and Recreation" impacts analysis presented in "Chapter 4: Environmental Consequences" of the Final EIS. These revisions are discussed below in the responses to the VE2000 concern statements.

<p>Concern Statement 38590</p>	<p>A commenter requested the EIS include additional detail from the Point Reyes National Seashore Association (Responsive Management) 2003 survey.</p>
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NPS Response to Concern Statement 38590:

Additional information from the Responsive Management report to the Point Reyes National Seashore Association (Responsive Management 2003) has been incorporated into the Final EIS, including the percentage of respondents that stated they would like to see more wilderness at the Seashore (43 percent), and the percentage that felt it should stay the same (38 percent).

In addition, the California State Historic Preservation Officer has concurred that none of the facilities associated with DBOC's operation are eligible for listing on the National Register of Historic Places. In addition, as also discussed in the "Impact Topics Dismissed from Further Analysis" section, no eligible cultural landscapes have been identified in the project area. Therefore, data related to the preservation of

historic buildings has not been included in the Final EIS. In addition, the statistics about preserving small dairy and beef ranches has not been incorporated because the proposed action would have no impact on beef and dairy operations within the Seashore.

In general, the “Visitor Experience and Recreation” sections of chapter 3 and chapter 4 of the Final EIS have been revised in incorporate additional information about the visitor experience and recreational opportunities provided at DBOC, including a discussion of the cultural experience provided at DBOC related to the preservation of local traditions.

Concern Statement 38591	A commenter requested the EIS quantify the percentage of DBOC customers that are not park visitors.
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NPS Response to Concern Statement 38591:

As described in the EIS, DBOC estimates that annual visitation for the oyster company is 50,000, approximately 2.5 percent of Seashore visitors. Specific data regarding the percentage of DBOC visitors that travel to the Seashore solely to visit the oyster company were not available at the time of report preparation; however, it is likely that many of the annual visitors to DBOC also visit other areas during their trip to the Seashore. All vehicle traffic to DBOC must travel over Sir Francis Drake Boulevard., which is monitored by the Seashore to estimate overall Seashore visitation. However, this approach does not provide an accurate measure of DBOC-only visitation because Sir Francis Drake Boulevard is a primary Seashore road that also connects visitors to a variety of popular sites within the Seashore, such as Point Reyes Beach and Point Reyes Lighthouse.. Although it is most likely that only a small percentage of the DBOC visitors do not use other areas of the Seashore, as a conservative approach to the socioeconomic impacts analysis, the Final EIS evaluates the impacts that would result if none of the current DBOC customers would visit other portions of the Seashore.

VE2000 - Visitor Experience and Recreation: Impact of Alternatives

Concern Statement 36227	Commenters stated that other similar operations cannot accommodate additional visitors should DBOC not be issued a new 10-year SUP.
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NPS Response to Concern Statement 36227:

The impacts to visitor experience and recreation discussed in “Chapter 4: Environmental Consequences” of the EIS are not based on the assumption that all opportunities available at DBOC would be provided by other shellfish operations. This text was included as a suggested offset for the loss of DBOC, rather than an assumed replacement. Based on public comments on the Draft EIS, this statement has been removed from the Final EIS, and the Final EIS has been revised to clarify that other area shellfish operations do not anticipate they could accommodate an increase in visitors due to the loss of DBOC.

Concern Statement 36433	<p>Commenters stated that the Draft EIS understates the impact of DBOC on Seashore experiences and requested the consideration of additional impacts, including:</p> <ul style="list-style-type: none"> -the smell of exhaust and oysters from commercial shellfish operations -views of Drakes Estero -presence of oyster shells on the shoreline -navigation around DBOC racks and bags -plastic debris
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NPS Response to Concern Statement 36433:

Additional information has been added to the “Impacts to Visitor Use and Experience” section of “Chapter 4: Environmental Consequences” of the Final EIS to more fully describe the adverse impact some visitors associate with DBOC. The Final EIS has been revised to clearly acknowledge that while some Seashore visitors want to experience the opportunities at DBOC, others feel its presence interrupts the surrounding pristine views and opportunities for solitude. Chapter 4 of the EIS notes that the presence of DBOC results in plastic debris in Drakes Estero and the surrounding shoreline, racks and bags within Drakes Estero, and interrupted natural views within Drakes Estero. Additional information has been incorporated into the Final EIS to reiterate these elements as well as consider that hikers and kayakers may experience sights, smells, or sounds associated with routine shellfish harvest and onshore processing operations, which may detract from the natural surroundings. In addition to visual intrusions, these odors detract from visitor enjoyment of the natural surroundings. Each of these elements has been considered and is factored into the overall impact assessment presented in the “Impacts to Visitor Experience and Recreation” section of chapter 4 of the Final EIS.

Concern Statement 37431	<p>Commenters stated the Draft EIS undervalues the experience provided to visitors at DBOC and requested consideration of additional elements such as:</p> <ul style="list-style-type: none"> -annual DBOC visitation -educational experiences and services provided by DBOC -picnic facilities -general public enjoyment of DBOC
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NPS Response to Concern Statement 37431:

As described in the concern statements above for VE1000, the “Visitor Experience and Recreation” section of “Chapter 3: Affected Environment” of the Final EIS has been revised to incorporate additional information about the visitor experience and recreational opportunities provided at DBOC. Information also has been added to the “Impacts to Visitor Use and Experience” section of “Chapter 4: Environmental Consequences” of the Final EIS to consider impacts to the DBOC visitor experience and recreational opportunities. The Final EIS has been revised to clearly acknowledge that although impacts to visitor experience and recreation are evaluated at a park scale, some Seashore visitors want to experience the opportunities at DBOC, while others feel its presence interrupts the surrounding natural environment and opportunities for solitude. Chapter 4 of the Draft EIS notes the annual visitation to DBOC and the opportunities provided to visitors by DBOC. However, the Final EIS has been revised to recognize the impacts to the DBOC visitor experiences in a manner consistent with the impact analysis for the visitor experience within the Seashore as a whole. In particular, the visitor experience and recreation section has been expanded to include more information about DBOC visitation and the educational experiences and services provided by DBOC, including a discussion of the existing picnic facilities and the general public enjoyment of DBOC. For consistency, the intensity definitions in the “Impacts to Visitor Experience and Recreation” section of the Final EIS have been modified so that they consider the DBOC visitor experience and other Seashore experiences consistently.

Concern Statement 39314	<p>A commenter requested that the impact of alternative D on the Coast Guard Communications Area Master Station Pacific (CAMSPAC) facility be addressed.</p>
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NPS Response to Concern Statement 39314:

The impact of alternative D on the CAMSPAC facility has been addressed in the Final EIS in the “Impacts on Visitor Experience and Recreation” section.

WE1000 - Wetlands and Waters of the U.S.: Affected Environment

Concern Statement 36228	A commenter stated that the term "wetland" is not correctly defined.
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NPS Response to Concern Statement 36228:

This section in the Final EIS has been re-titled “Wetlands and Other Waters of the U.S.” to more completely cover all jurisdictional areas. The definition used in chapter 3 accurately captures the definition of a wetland as cited in federal regulations. Furthermore, the term wetland, as applied in the EIS, includes those items described in Cowardin et al. (1979) on page 3. The Final EIS has been revised to include this section of Cowardin et al. for clarification. All areas below the high tide line are jurisdictional waters of the US. The comment refers to subtidal as below the high tide mark. The correct interpretation of subtidal is below the low tide mark, or continuously submerged. The subtidal region of the estero is where the racks are located. Those areas between the low tide and high tide are intertidal (exposed and flooded by tides). This area is used for the placement of culture bags and trays. The intertidal zone where the bags and trays are placed meets the definition of a wetland.

Concern Statement 36229	A commenter requested that impacts from potential sea level rise on wetlands be included.
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NPS Response to Concern Statement 36229:

Impacts on sea level rise are considered both as part of the existing conditions imposed on wetlands as well as a consideration in the discussion of impacts (see Concern ID 36230 below). The rate of sea level rise will not be altered by any of the proposed alternatives, and the effects of sea level rise on wetlands would be the same under all alternatives.

Concern Statement 37176	A commenter requested additional detail regarding the historic change in wetlands within the project area.
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NPS Response to Concern Statement 37176:

Additional detail has been provided on historic wetlands at the onshore facility in the “Wetlands and Waters of the U.S.” section in chapter 3 of the Final EIS.

WE2000 - Wetlands and Waters of the U.S.: Impact of Alternatives

Concern Statement 36230	<p>Commenters requested additional detail regarding the impacts of commercial shellfish operations on wetlands, including:</p> <ul style="list-style-type: none"> -additional detail on acreages of impacts (including the acreage of the entire estero for context) -substantiation of adverse impacts of commercial shellfish operations on wetlands -impacts of plastic debris -distance between existing onshore facilities and structures and onshore wetlands -impacts in the context of climate change
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NPS Response to Concern Statement 36230:

Changes to the impacts sections in chapter 4 were included to clarify acreages of the areas used for offshore oyster culture. Acreages are based on permitted beds for the various uses (racks and bottom bags). Data on site specific acreages used, such as the exact square footage of coverage by bags, is ever changing as bags are placed and removed. For comparison of alternatives, the review of impacts is based on the size of the permitted culture beds. With regard to onshore impacts to wetlands, DBOC provided additional information related to a proposed new intake pipe under alternative D. This information has been incorporated into the chapter 4 section. Other aspects of onshore activities related to potential wetland impacts are adequate for comparing alternatives.

There is not a designated buffer at the onshore facilities. Distances between wetlands and structures vary along the shoreline and can be viewed on figure 2-3, which shows existing conditions. In response to one commenter, the wetland impacts section of chapter 4 has been revised to acknowledge the mobile home located on the shoreline of the pond adjacent to the onshore facilities.

The park recognizes the history of loose debris directly attributed to shellfish operations, and the evaluation of alternatives takes into consideration the unavoidable release of plastics that may wash ashore in the future. Debris cleanup is a requirement of sections 3.2.2 and 3.2.3 of the 2007 Cease and Desist Order with the CCC, and section 7(b) of the 2008 SUP, and is the responsibility of DBOC.

A review of mapping was performed to determine the approximate acreage of mudflats, sandflats, and eelgrass within the permitted beds. This information is included in the chapter 3, in the “Wetlands and Waters of the U.S.” section.

The wetlands section of chapter 4 is clear in its analysis that impacts to wetlands from offshore structures and bottom bags are in the context of acreages of the available permitted beds. Because the racks are not expected to change in size during the course of the permit period, the reported figure of 7 acres was used to describe the area of impact based on the dimensions of the racks as fixed structures (NAS 2009). On the other hand, the exact coverage of bags is variable and unpredictable since bags would be routinely moved; thus, the acreage size of the permitted beds was used for the impact analysis. The wetlands section of chapter 4 also states that the analyses are based on physical impacts, or those actions where a structure is placed in a wetland or the wetland is physically altered such as with dredging or filling. Other impacts to wetlands that may occur such as changes in water quality, impacts to vegetation, wetland wildlife habitat, benthics, etc. are discussed in other sections. Discussion of value of infrastructure as artificial habitat is addressed in “Impacts on Wildlife and Wildlife Habitat: Fish” section of chapter 4

Additional detail was provided in chapter 4 to acknowledge impacts to wetlands in the context of climate change.

Concern Statement 36231	Commenters requested additional discussion of relevant laws and policies related to wetlands.
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NPS Response to Concern Statement 36231:

Chapter 4 focuses on impacts to wetlands primarily from three actions: the discharge of fill material, the dredging/excavation in wetlands, and temporary disturbances to wetlands caused by the shellfish operation. The laws and policies presented in the Draft EIS provide context for addressing these actions. Issues related to wildlife habitat or water quality are discussed in other sections. The list of laws and policies for each impact topic in the EIS is intended to present a context in which to evaluate proposed actions. With regard to Nationwide Permit 48, NPS is aware of the promulgated rule changes affecting all Nationwide Permits dated February 1, 2012, as well as California’s changes to their implementation of section 401 Water Quality

Certification. Chapter 4 of the EIS has been updated to include a clearer explanation of the revisions to the NWP 48. It should be noted that the U.S. Army Corps of Engineers is the sole agency responsible for determining whether any shellfish operation project meets or does not meet the NWP 48 requirements.

WI1000 - Wilderness: Affected Environment

<p>Concern Statement 36232</p>	<p>Commenters requested additional detail regarding existing wilderness areas and characteristics, including the following:</p> <ul style="list-style-type: none"> -amount of commercial shellfish operations within wilderness area -designation of non-conforming uses
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NPS Response to Concern Statement 36232:

Please refer to the “Wilderness” section of chapter 3 on pages 262-266 for the amount of commercial shellfish operations that take place within the congressionally designated potential wilderness area and why that use is designated as nonconforming. Onshore facilities are approximately 750 feet north of the boundary of the congressionally designated wilderness area.

WI2000 - Wilderness: Impact of Alternatives

<p>Concern Statement 36233</p>	<p>Commenters requested clarification regarding the impacts on wilderness characteristics, including the following:</p> <ul style="list-style-type: none"> -eligibility for conversion under all alternatives -enhancement of wilderness character -consistency with the Wilderness Act and those acts designating wilderness areas within the Seashore -plastic debris
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NPS Response to Concern Statement 36233:

Eligibility for Conversion. Human use of an area does not per se preclude it from being eligible as a congressionally designated wilderness area. The Wilderness Act provides that wilderness areas are to be administered for the use and enjoyment of the American people as wilderness in a manner that will leave them unimpaired for future generations. Section 4(c) of the Wilderness Act identifies certain activities and uses that are prohibited in wilderness. Included among those restrictions is a prohibition on commercial enterprises. DBOC’s commercial shellfish operation is a commercial enterprise that cannot continue if Drakes Estero is converted to congressionally designated wilderness (page 461).

Issuance of a new 10-year SUP under the authority of section 124 would not change the eligibility of the congressionally designated potential wilderness to be converted to congressionally designated wilderness at a future date; however, the period of time during which impacts are analyzed in this document is 10 years. Therefore, the impacts on wilderness character focus on how continued commercial shellfish operations would continue to impact wilderness characters for the next 10 years, even if wilderness conversion takes place in 2022.

Enhancement of Wilderness Character. Enhancement of wilderness characters is based upon the expectation that the natural and physical resources and processes of Drakes Estero would return to a more natural state, as summarized under the “Impacts to Wilderness” section of chapter 4. Additional detail regarding the impacts on these resources can be found in the respective sections.

Consistency with Wilderness Act. Commercial shellfish operations are the only nonconforming uses currently preventing conversion of Drakes Estero from congressionally designated potential wilderness to congressionally

designated wilderness, as described in the “Impacts on Wilderness” section of chapter 4. The following items do not preclude conversion from potential wilderness to wilderness: the presence of working ranches surrounding Drakes Estero, the public trust right to fish, and the retained rights of the state to minerals.

Plastic Debris. Additional detail was added to the “Impacts on Wilderness” section (pages 464-465, 470) to address how shellfish operation debris impacts wilderness characters.

WQ1000 - Water Quality: Affected Environment

Concern Statement 36234	Commenters requested additional detail regarding the current water quality of Drakes Estero, including the following: -role of shellfish in filtration of water -DBOC's discharge of water into Drakes Estero
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NPS Response to Concern Statement 36234:

The role of bivalves as filter feeders is well documented in the chapter 3 sections on Biochemical Cycling and Bivalves. Additional narrative related to bivalves as filter feeders has been included in the Water Quality section of chapter 4. This section also notes the influences to water quality caused by the cattle ranches as identified in the CDPH’s shellfish harvesting plan for DBOC. No data is available that details the effects the oysters have on runoff entering Drakes Estero.

According to RWQCB, the current discharge from the washing station does not constitute a pollutant and does not require monitoring for compliance with the Clean Water Act. DBOC’s discharge of water into Drakes Estero is recycled water pumped from the estero. Alternatives B, C, and D call for a new sediment basin to allow the filtering of the spray wash before the water is allowed to discharge into the estero.

Concern Statement 37183	Commenters requested that use of specific references related to water quality be reviewed and/or revised.
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NPS Response to Concern Statement 37183:

References that were not applicable (i.e., not within Drakes Estero or for research conducted in a dissimilar setting) or did not meet the criteria described under “References Used for Impact Analysis” on page 23 of the Final EIS were not used in preparing the Final EIS. Over 850 additional references were suggested for use in the Final EIS. Over 150 references were closely reviewed, considered for use, and are incorporated where relevant, including within this section. Please refer to the “Impact Topic: Water Quality” section of chapter 3 for references cited.

Very little peer-reviewed data is available on water quality of Drakes Estero other than the reports by Anima (1990, 1991) in the early 1990s, the pathogenic water quality results reported annually by CDPH, and the limited data collected by Wechsler in 2004. The suggested alterations to the water quality narrative were taken into consideration. The data in the EIS are believed to accurately reflect these earlier studies and reports. The “Impacts on Water Quality” section also has been revised considering the suggestions made by NAS (2012). See pages XXX regarding what data were available and how the data were used.

The statement referencing cattle head numbers was simply a statement of fact to give the reader information that the number of cattle was reported to decline between 1991 and 2005. With regard to pathogenic information, data provided by CDPH’s was utilized and cited.

While the data from sampling is not reported, the EIS focused on the findings of CDPH. Data on pathogenic

sources has been collected over the years through the state’s mandated collection of water samples and shellfish tissue samples. The results of these collections were used to develop a harvesting plan specifically for DBOC. The harvesting plan is modified periodically based on new information as samples are continually analyzed. For instance, the 2012 harvesting plan mentions a new monitoring station near the shoreline where cattle have been observed over a concern about heightened fecal coliform levels in that specific area of Drakes Estero. Overall, the EIS is consistent with the findings and decision-making conclusions of CDPH.

WQ2000 - Water Quality: Impact of Alternatives

<p>Concern Statement 36235</p>	<p>Commenters requested additional detail regarding the impacts of commercial shellfish aquaculture on water quality, including:</p> <ul style="list-style-type: none"> -relative role and scale of tidal flushing in impacting water quality -difference in flushing between the main body of the estero versus the bays -ecosystem services (such as biosequestration, nutrient removal/denitrification, and particulate filtration) provided by commercial shellfish -impervious surfaces -use of treated wood -wastewater treatment -use of water from Drakes Estero and the state of it when returned to Drakes Estero
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NPS Response to Concern Statement 36235:

The comment on tidal flushing does not accurately describe the conditions of Drakes Estero. This system flushes most of its water and receives a new supply of water each tidal cycle. In addition, the nutrient load from the watershed is relatively low because the size of the water shed is comparatively small. With the high flushing rate, the risk of anoxia is extremely low. See pages 210, 212, and 228 of the Final EIS for more details on this discussion.

Beneficial filter feeding functions provided by oysters is described in chapter 3 of the EIS. A similar acknowledgement with references has been provided in the “Impacts on Water Quality” section of chapter 4.

DBOC’s wastewater treatment system at the onshore facility operates via a pumping system that conveys the wastewater to a septic system located on the neighboring ridge. NPS is not aware of any unauthorized discharges or problems with the wastewater treatment system at the onshore facility since the septic system was installed. There was an incident in 2006 when a septic system at one of the ranches failed due to flooding. The park immediately corrected the situation by installing a new system out of the flood-prone area and monitoring the system on a regular basis. Nevertheless, the placement of on-site wastewater treatment facilities near shorelines always has the potential to fail and cause spillage into surface waters. This risk must be considered in the analysis of alternatives.

The water quality monitoring is part of a program required by the California Department of Public Health (CDPH) as cited in chapters 3. Monitoring stations are established by CDPH, and DBOC is required to collect samples for analysis. CDPH uses this data to develop harvesting restrictions as part of a management plan for commercial shellfishing. The locations of the water quality monitoring sites are distributed across Drakes Estero within the permitted shellfish growing area.

The EIS cites benefits of bivalves on water quality in chapters 3 and 4 via removal of nutrients, sediments, and phytoplankton. While the filter feeding benefits of shellfish to water quality and nitrogen/phosphorus uptake is noted, the EIS describes that Drakes Estero obtains the vast majority of its nutrients from oceanic sources each tidal flushing cycle, and excessive contributions of nitrogen and subsequent hypoxia are not concerns with this system.

The California Department of Public Health monitors phytoplankton across the entire coastline of the

state for occurrences of red tide or PSP events. Information regarding diatoms specific to public health are presented in the water quality section in chapter 3.

The topic of impervious surfaces relates to water quality due to surface runoff of pollutants into Drakes Estero during rain events. The EIS makes a comparative analysis between alternatives taking into consideration the removal of impervious surfaces from buildings, etc., as well as the removal of DBOC motorized equipment and personal vehicles that may contribute to non-point sources of pollutants.

Information regarding proposed installation of the work platform, dock, conveyor and sediment basin were included in the EIS based upon information provided by DBOC following the 2011 storm damage event. Description of these activities has been incorporated into the water quality section of chapter 4.

In response to concerns about copper leachates and impacts to salminods, additional review of literature sources and an expanded analysis of the use of treated wood for the racks were performed. DBOC submitted a request in June 2012 to repair/replace 50 racks in 2013 and 25 racks in 2014. This information is included in the chapter 4 water quality section.

Concern Statement 36237	Commenters requested that use of specific references related to water quality be reviewed and/or revised.
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NPS Response to Concern Statement 36237:

Over 850 additional items were suggested during preparation of the Final EIS. References that were not applicable (i.e., not within Drakes Estero or for research conducted in a dissimilar setting) or did not meet the criteria described under “References Used for Impact Analysis” on page 23 of the Final EIS were not used in preparing the Final EIS. Over 150 references were closely reviewed, considered for use, and are incorporated where relevant to this section. Please refer to the “Impacts on Water Quality” section of chapter 4 (pages 423-441) for references used.

The water quality sections in chapters 3 and 4 of the EIS recognize the filtering functions that bivalves provide to water quality. Based on best available data, it has been determined that the primary sources of nutrients in Drakes Estero derive from the Pacific Ocean from tidal exchange. Specific pathogens related to runoff from the watershed have been identified in chapter 3 water quality section as reported by the CDPH.

Anima reported very small levels of pesticides in the bottom sediment of Drakes Estero. The Final EIS notes that these levels are “near or below the detection limits of the analytical methods used.” Nevertheless, they exist, and disturbances to sediment would result in an impact to water quality as these pesticides are reintroduced back into the water column, albeit at very low levels.

CC3000 - Consultation and Coordination: Public Outreach and Involvement

Concern Statement 36239	A commenter stated that the public involvement for this EIS was not done properly and in accordance with CEQ regulations.
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NPS Response to Concern Statement 36239:

Although section 124 provides authority “notwithstanding any other law,” DOI and NPS decided to prepare an EIS and provide for public involvement in this decision.

The NOI that was published in the Federal Register for this project contained the purpose and need for taking action. Although CEQ calls for including potential alternatives, no alternatives existed at the time

the notice was published, and therefore no potential alternatives were included. The scoping process was described in the NOI, including the closing date of the comment period and a web address for additional information. A press release was issued on October 5, 2010 prior to the NOI being published in the Federal Register announcing the dates, times and places of the public scoping meetings. This information was also posted on the PEPC website and the park's website. On October 8, 2010, the NPS sent out letters to interested parties to inform them of the upcoming public scoping opportunities and activated the project on the PEPC web-site (<http://parkplanning.nps.gov/pore>). The NPS confirmed that information in the press release announcing the scoping meetings was picked up by many San Francisco Bay Area media outlets and interested parties were well-informed, as evidenced by the high turnout. NPS has not received any comments from interested parties who were unable to attend the meetings due to insufficient notice.

During the 50-day public scoping period, the NPS made every effort to diligently involve the interested and affected public, including holding three meetings in the vicinity of the park. To the extent that any member of the public or any organization was not included in the initial scoping notices, those that made themselves known to NPS by commenting during scoping or otherwise indicating that they would like to be informed about the process were added to the mailing list for the project. A number of national organizations participated in the planning process, as evident from their comments submitted on the Draft EIS.

In addition, the NPS received a significant amount of correspondence from the public during both the scoping and the Draft EIS comment period. Due to unforeseen reasons (a temporary power failure and the release of the Marine Mammal Commission report), NPS extended both the scoping and Draft EIS comment periods to accommodate those who were unable to comment or had additional comments. Ultimately, NPS received 4,160 pieces of correspondence for scoping, and 52,473 pieces of correspondence on the Draft EIS.

Public participation and outreach throughout the EIS process has been consistent with that required by NEPA and the DOI NEPA regulations, and in fact, provided far more public participation opportunities than the minimum required by NEPA and CEQ.

Concern Statement 36296	A commenter requested that name and contact information be required for anyone submitting comments during the NEPA process and the NPS should not make policy decisions based on public comments from unidentified and unverified individuals.
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NPS Response to Concern Statement 36296:

NEPA does not require identification to be provided or proven as a condition of providing public comments. All public comments received by the NPS in one of the acceptable methods described in the Notice of Availability and posted on the NPS PEPC site and Point Reyes National Seashore website were considered and treated equally. Public comment was only one of many factors considered by the decision maker when selecting the preferred alternative.

RF1000 – Suggested References

Concern Statement 36244	Commenters suggested additional references for use.
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NPS Response to Concern Statement 36244:

All references suggested by public comment as well as the peer reviews of the Draft EIS have been reviewed. Over 850 references were suggested for consideration in the Final EIS. References that were not applicable (i.e., not within Drakes Estero or for research conducted in a dissimilar setting) or did not meet the criteria described under “References Used for Impact Analysis” on page 23 of the Final EIS were not used in preparing the Final EIS. Over 150 references were closely reviewed, considered for use, and are incorporated where relevant to this section.

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**SUMMARY OF RESPONSES TO THE
NAS REVIEW OF THE DRAFT EIS**

SUMMARY OF RESPONSES TO THE NAS REVIEW OF THE DRAFT EIS

The National Park Service (NPS) response to each of the “NAS [National Academy of Sciences] Suggestions for DEIS [Draft Environmental Impact Statement] Revisions and Reducing Uncertainty in the Conclusions” is provided below.

- 1. NAS Suggestion: Re-define levels of impact intensity using criteria that clearly distinguish levels of impact (negligible, minor, moderate and major) that are comparable across levels (e.g., direct and indirect impacts; impacts at individual, population and community levels of organization).**

NPS Response: Intensity definitions are intended to make a predicted level of impact easier for the public and decision-maker to understand. Per the NPS Director’s Order 12 Handbook (NPS 2001b), the use of intensity definitions such as negligible, minor, moderate or major, is optional.

In response to this suggestion, NPS made the following changes to impact intensities. The intensity definitions for wildlife and wildlife habitat were revised so that impacts across levels of organization are consistently described. Specific concerns from the committee regarding intensity definitions for special-status species, coastal flood zones, water quality, and soundscapes were considered and the definitions clarified as necessary. The intensity definitions were also revised to describe the context (geographic scale) consistently amongst the various levels of impact. Direct and indirect impacts are described independently of the intensity definitions, as is the standard practice in a NPS National Environmental Policy Act (NEPA) document.

Although not required by NPS NEPA guidance (DO-12 or DO-12 Handbook), the definition of negligible was added for each impact topic. The category of “negligible” impact is most appropriately used to discuss those impact topics considered but dismissed from further analysis in chapter 1.

The NAS also questioned why the Draft EIS did not have magnitude thresholds for beneficial impacts. The Council on Environmental Quality (CEQ) regulations (40 CFR 1508.8) define the effects analyzed in an EIS to include “those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.” The primary purpose of this reference to beneficial effects is thus to ensure that detrimental impacts are not hidden or ignored based on an argument that the net effects of an action might be beneficial. Neither these definitions nor anything else in the CEQ regulations or NPS NEPA guidance creates any requirement to assign impact intensity scales to “beneficial impacts.”

The CEQ regulations advise (40 CFR 1500.2), and the NPS *Management Policies 2006* (NPS 2006) require, that managers minimize and avoid adverse impacts to park resources. Standard NPS NEPA practice, as reflected in the Director’s Order 12 Handbook (NPS 2001b) and elsewhere, thus focuses mainly on describing and disclosing adverse effects. Beneficial effects may be discussed and analyzed, wherever present, but generally only in a qualitative manner. Developing intensity definitions for such effects is generally not necessary given their limited role in the analysis. Generating “beneficial impact” intensity definitions, especially given that it would be neither required nor standard practice under NEPA, was not warranted.

2. NAS Suggestion: Qualify each impact intensity conclusion in terms of levels of uncertainty such as those used by the committee.

NPS Response: Uncertainty levels are not used within the impact analyses; however, a discussion on the strength of the underlying scientific data was added to the methodology section for each impact topic that specifically discusses the data and information used for impact analysis. For each impact topic, the methodology clearly indicates what data/information is used in assessing impacts, where that data/information came from (research on Drakes Estero or other similar ecosystems), and what data/information is lacking.

3. NAS Suggestion: Clearly identify and explain all assumptions made in reaching conclusions concerning impact intensities.

NPS Response: The impact analysis was reviewed and revised where necessary to ensure it is clear to the reader why a particular impact intensity level is assigned. Assumptions used for impact analysis are described at the beginning of chapter 4 as well as under the “Methodology” section for each impact topic.

4. NAS Suggestion: Describe potential alternate conclusions as appropriate (e.g., Table 5-2).

NPS Response: Comments from chapter 3 of the NAS report specific to each resource were reviewed and changes were made to the analysis as needed. The revised impact analysis was then compared to the revised intensity definitions and, based on best professional judgment, an impact level was assigned.

It is important to note that many of the committee’s alternate conclusions consider the context, or geographic extent of the impact, when suggesting a lower level of impact intensity. (e.g., “Impact may be minor given the local scale of the DBOC [Drakes Bay Oyster Company] footprint.”) Intensity definitions have been clarified to include a consistent description of context within each impact level.

In addition, see the response to NAS Suggestion #2.

5. NAS Suggestion: Segregate impact assessments for alternative A from alternatives B, C, and D and indicate that the assessments are not comparable due to use of different baselines.

NPS Response: This suggestion from NAS is tied to the NEPA concept of the “no action alternative.” As the NAS explained, “The committee recognizes that, in NEPA practice, the ‘no action’ alternative is usually considered the ‘baseline’ under which current environmental conditions are compared. In these situations, environmental conditions would not change under a ‘no action’ alternative. However, in the case of DBOC, if the Secretary of the Interior took no action, the Special Use Permit (SUP) would expire and alternative A would be implemented, which would change current conditions” (NAS 2012a). NPS agrees with NAS that if the Secretary takes no action, DBOC’s authorizations would expire and existing conditions would change. (For further explanation of the NPS’s approach to the no-action alternative, see Response to Concern Statement 35987 in appendix F.) As a result, the usual approach to the no-action alternative (i.e., continuation of current conditions) was not appropriate here.

Given the uniqueness of this situation, the Draft EIS included expressions such as “would continue to occur” when describing impacts under alternatives B, C, and D to reinforce the fact that the impacts described are not new impacts, rather they are existing impacts that would persist into the future. This emphasizes that the impacts being described in each of the action alternatives are grounded in the existing conditions, which are described in “Chapter 3 Affected Environment” of the EIS. Additional clarifying language has been added throughout the impact analysis where appropriate to note where an impact would continue versus what would constitute a new impact.

6. NAS Suggestion: Use all relevant and available information, especially for water quality and soundscapes, such as additional measurements reported in Volpe (2011); analyze sound levels based on both dBA and unweighted values across a wide frequency range; and consider duty cycles when estimating the fraction of time DBOC activities impact the soundscape.

NPS Response: Additional relevant and available information has been considered when revising the water quality and soundscapes impact analyses in the Final EIS. Studies on water quality related to commercial shellfish operations have been performed worldwide in a vast array of aquatic regimes. The assessment in the Final EIS relies on data specific to the immediate project area, and inferences based on offsite studies in similar environments were used as supporting information. Onsite studies include the work over decades by the California Department of Public Health (CDPH) regarding harmful bacteria and toxic algae, water quality reporting by Anima from the early 1990s (1990, 1991), and Wechsler’s work (2004) measuring nutrients and turbidity levels from 2003. NAS suggested the use of preliminary poster abstracts, some of which were released well after public release of the Draft EIS, without a full review of methods and data. These abstracts do not meet the criteria for primary reference works described in the “References Used for Impact Analysis” section of the EIS; therefore, they have not been incorporated into the Final EIS. Because shellfish are filter feeders, it was important as part of this assessment to look at the onsite studies to evaluate the influences, if any, DBOC shellfish may have on water quality. In this regard, the only data at Drakes Estero that compares water quality parameters in Schooner Bay (commercial shellfish operations) and in Estero de Limantour (no commercial shellfish operations) were collected by Wechsler (2004). This data was used in the analysis of impacts on water quality. Offsite studies were used where onsite data gaps existed.

To supplement the soundscapes section in the Final EIS, the data collected onsite by Environ International Corporation has been included in the existing conditions and analysis of impacts. Because Environ did not follow pertinent standards and because the measurement processes and the operating conditions of the equipment were not adequately described, the Environ measurements were compared with reports that document noise levels measured under specified conditions from comparable equipment. In addition, measurements of boat noise made at the PORE004 site during the Volpe (2011) study and calculated from six microphone-to-boat distance measurements (Goodman 2012) have been included in the existing conditions documentation and as part of the impact analysis. Chapter 3 text has been expanded to discuss comparative audiological studies that suggest human hearing is a protective model for most terrestrial wildlife when evaluating low frequency noise impacts. Very few terrestrial vertebrates have lower hearing thresholds than humans below 500 Hz. Flat weighting, as suggested by the NAS committee, ignores the universal trend of diminished hearing sensitivity at low and high frequencies by all terrestrial vertebrates. Finally, additional analysis of the PORE004 data (as collected during the Volpe 2011 study) has been used to document the temporal extent of impacts and the distribution of noise levels within the reception

range of microphone PORE004 at this location, and language has been added to explain why these measures understate noise exposure in most other parts of Drakes Estero.

7. NAS Suggestion: Additional mitigation options could be included as possible permit conditions for the action alternatives to reduce impacts, e.g., an option to cease the culture of Manila clams would address some concerns about the establishment of that non-indigenous species in Drakes Estero; impacts of many DBOC practices (i.e., boat use, culture species and techniques, marine debris, soundscape effects) could potentially be reduced by the implementation of appropriate mitigation measures.

NPS Response: Section 124 provides the Secretary the discretionary authority to issue a Special Use Permit (SUP) with the same terms and conditions as the existing authorizations. All of the special permit conditions from sections 4 and 6 of the 2008 SUP were included as elements common to all action alternatives.

As a result of NAS recommendations, Manila clams have been removed as a species authorized for cultivation under alternative C to address concerns about the establishment of this invasive species in Drakes Estero. Although Manila clams are presently cultivated in and harvested from Area 1, a SUP granted under this alternative would not allow cultivation and harvest of Manila clams. While Manila clams were permitted in Area 2 in 2008 when the SUP was signed, the bottom bag culture method used at the time was not consistent with authorized methods for that permit. Should this alternative be selected, DBOC would be required to remove all Manila clams currently being cultivated in Drakes Estero prior to receipt of a new SUP. DBOC would also be responsible for implementing culture handling and harvest practices to minimize fragmentation and loss of *Didemnum* from oysters within Drakes Estero. In addition, under alternative D, DBOC would be required to house onshore sound-generating equipment within any new buildings constructed to the extent practicable. Additional mitigation measures have not been added to the action alternatives due to the uncertain nature of their technical, operational, or economic feasibility. However, if further investigation into these potential mitigation measures indicates that they are in fact feasible, additional mitigation measures may be included as permit conditions in the future.

Other measures identified within the Final EIS include removal of European flat oyster and prohibition of stake culture methods from all of the action alternatives.

In addition, section 2(b) of the 2008 SUP establishes that DBOC is responsible for obtaining all necessary permits, approvals, or other authorizations relating to use and occupancy of the premises.

8. NAS Suggestion: Assess impacts associated with the potential establishment of non-indigenous species as a separate category.

NPS Response: In determining impact topics, the NPS considers all natural, cultural, and human resources that may be affected by the proposed action. It is not standard practice to consider “the potential establishment of non-indigenous [nonnative] species” as a stand-alone impact topic, but instead to consider the impact these species may have on the natural, cultural, or human environment, as appropriate. Within the EIS, the impact of each alternative on the potential establishment, spread, or

reduction of nonnative, invasive species is considered in the following resources: wetlands, eelgrass, wildlife and wildlife habitat: benthic fauna, wilderness, and NPS operations.

- 9. NAS Suggestion: Provide greater consideration of the potential influence of climate change on DBOC operations and their associated impacts, e.g., rising sea level over the next 10 years could influence the spatial extent of inundation, potentially impacting resource categories such as vegetated tidal wetlands and the coastal flood zone (NRC, 2012); geographic ranges of warm water marine species are already extending poleward (e.g., Sorte et al., 2010; Doney et al., 2012), a trend that could exacerbate problems associated with invasive non-indigenous species, including increasing the potential for establishment of reproductive populations of the nonnative Pacific oyster in Drakes Estero.**

NPS Response: Additional discussion of climate change impacts on wetlands, coastal flood zones, and implications of climate change on the spread of invasive species has been incorporated into the EIS based upon information from scientific literature to the extent possible.

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H

WECHSLER DATA

WECHSLER DATA

The following tables are taken from the Wechsler (2004) report, *Assessing the Relationship Between the Ichthyofauna and Oyster Mariculture in a Shallow Coastal Embayment, Drakes Estero, Point Reyes National Seashore*.

TABLE H-1. ENVIRONMENTAL CHARACTERISTICS MEASURED IN ESTERO DE LIMANTOUR AND SCHOONER BAY DURING THE DRAKES ESTERO ICHTHYOFAUNA-OYSTER MARICULTURE STUDY, DRAKES ESTERO, POINT REYES NATIONAL SEASHORE, 2002-2004

Date	Location	Depth (m)	Salinity (ppt)	Temp (C)	Clarity (m)	DO (mg/l)	DO (%)
12/4/02	Limantour	2.10	32.7	13.3	2.10*	7.33	85.0
12/4/02	Limantour	1.67	32.7	12.5	1.67*	6.35	74.6
4/14/03	Limantour	1.55	32.2	13.5	1.55*	7.79	89.4
4/14/03	Limantour	0.65	32.5	13.9	0.65*	9.01	106.2
4/14/03	Limantour	1.50	32.0	14.7	1.50*	7.23	86.5
4/14/03	Limantour	1.10	32.7	12.8	1.10*	8.94	103.4
7/1/03	Limantour	0.97	32.6	19.5	0.61	13.27	176.0
7/1/03	Limantour	1.73	32.3	15.0	1.28	10.43	125.3
7/27/03	Limantour	2.00	33.0	18.7	2.00*	9.50	124.5
10/17/03	Limantour	2.07	33.7	11.7	2.07*	7.80	88.0
10/17/03	Limantour	1.46	33.9	13.5	1.46*	9.71	115.3
10/17/03	Limantour	2.59	33.9	12.7	2.59*	8.16	96.5
11/14/03	Limantour	†	32.5	12.2	†	6.82	77.8
11/14/03	Limantour	2.10	32.7	12.5	2.01*	7.68	88.5
11/14/03	Limantour	1.34	32.4	12.5	1.34*	8.02	92.4
1/12/04	Limantour	1.44	29.8	12.0	1.44*	8.45	93.2
1/12/04	Limantour	1.30	28.7	12.1	1.30*	8.47	94.4
	Mean	1.60	32.37	13.71	1.54	8.53	101.00
12/3/02	Adjacent to Racks	2.30	32.8	12.0	2.30*	9.50	†
4/11/03	Adjacent to Racks	2.10	34.0	15.7	1.75	8.44	104.0
4/14/03	Adjacent to Racks	†	32.8	13.2	†	7.36	86.4
4/14/03	Adjacent to Racks	1.45	32.7	14.3	1.45*	8.44	100.8
6/28/03	Adjacent to Racks	1.60	32.3	18.9	1.07	13.75	140.5
7/24/03	Adjacent to Racks	1.60	34.6	19.4	6.70	6.70	89.5
7/25/03	Adjacent to Racks	1.65	34.3	20.6	1.65*	10.31	140.0
10/18/03	Adjacent to Racks	1.25	33.9	13.4	1.25*	8.07	95.5
11/12/03	Adjacent to Racks	1.92	31.6	12.8	1.92*	7.88	91.1
11/12/03	Adjacent to Racks	1.86	31.8	12.8	1.86*	8.51	98.3
11/12/03	Adjacent to Racks	2.01	31.7	12.3	1.71	7.43	84.7
1/10/04	Adjacent to Racks	1.98	28.9	12.2	1.14	7.71	86.2
1/10/04	Adjacent to Racks	1.52	29.3	13.1	0.83	8.67	98.2
	Mean	1.68	32.00	14.18	1.83	8.43	99.76

Source: Wechsler 2004

* Starred clarity data indicates those readings truncated by the same distance equal the bottom.

† Data not recorded.

Note: Clarity recorded adjacent to racks on 7/24/03 appears to be incorrect, as it exceeds the depth of the bottom.

TABLE H-1. ENVIRONMENTAL CHARACTERISTICS MEASURED IN ESTERO DE LIMANTOUR AND SCHOONER BAY DURING THE DRAKES ESTERO ICHTHYOFAUNA-OYSTER MARICULTURE STUDY, DRAKES ESTERO, POINT REYES NATIONAL SEASHORE, 2002-2004 (CONTINUED)

Date	Location	Depth (m)	Salinity (ppt)	Temp (C)	Clarity (m)	DO (mg/l)	DO (%)
4/11/03	Away From Racks	1.05	33.5	18.1	1.05*	11.08	143.0
4/14/03	Away From Racks	1.45	32.4	12.5	1.45*	7.33	84.4
6/29/03	Away From Racks	1.58	32.8	30.6	0.97	8.75	117.5
7/24/03	Away From Racks	1.50	31.5	15.7	1.50*	11.31	139.0
10/18/03	Away From Racks	1.58	34.2	15.4	1.58*	7.84	96.0
10/18/03	Away From Racks	1.83	33.8	14.6	1.83*	9.80	118.3
11/12/03	Away From Racks	1.52	31.6	12.8	1.52*	7.98	92.0
11/12/03	Away From Racks	1.55	31.8	12.8	1.55*	8.90	102.8
11/12/03	Away From Racks	2.07	31.4	12.5	1.46	7.31	82.5
1/10/04	Away From Racks	2.38	27.9	12.4	0.91	8.66	93.8
1/10/04	Away From Racks	1.88	23.5	12.3	0.45	8.74	92.0
	Mean	1.73	31.16	13.95	1.39	8.61	101.15

Source: Wechsler 2004

* Starred clarity data indicates those readings truncated by the same distance equal the bottom.

† Data not recorded.

Note: Clarity recorded adjacent to racks on 7/24/03 appears to be incorrect, as it exceeds the depth of the bottom.

TABLE H-2. WATER COLUMN VARIABLES MEASURED DURING THE DRAKES ESTERO ICHTHYOFAUNA-OYSTER MARICULTURE STUDY, POINT REYES NATIONAL SEASHORE, DECEMBER 2002 – JANUARY 2004

Date	Location	Ammonia (NH4-N)	Nitrate (NO3-N)	Total Suspended Solids
April	Limantour	0.13	0.050	112.00
April	Limantour	0.11	0.170	84.00
April	Limantour	0.12	0.050	86.00
April	Limantour	0.16	0.050	110.00
July	Limantour	0.18	0.050	62.00
July	Limantour	0.21	0.050	56.00
July	Limantour	0.21	0.050	94.00
	Mean	0.16	0.07	86.29
April	Schooner Adjacent to Racks	0.13	0.060	104.00
April	Schooner Adjacent to Racks	0.14	0.080	98.00
April	Schooner Adjacent to Racks	0.12	0.050	108.00
July	Schooner Adjacent to Racks	0.20	0.050	96.00
July	Schooner Adjacent to Racks	0.14	0.050	94.00
July	Schooner Adjacent to Racks	0.38	0.050	72.00
	Mean	0.19	0.06	95.33
April	Schooner Away from Racks	0.12	0.050	112.00
April	Schooner Away from Racks	0.12	0.050	82.00
April	Schooner Away from Racks	0.21	0.050	116.00
July	Schooner Away from Racks	0.25	0.050	58.00
July	Schooner Away from Racks	0.21	0.050	72.00
July	Schooner Away from Racks	0.12	0.050	70.00
	Mean	0.17	0.050	85.00

Source: Wechsler 2004

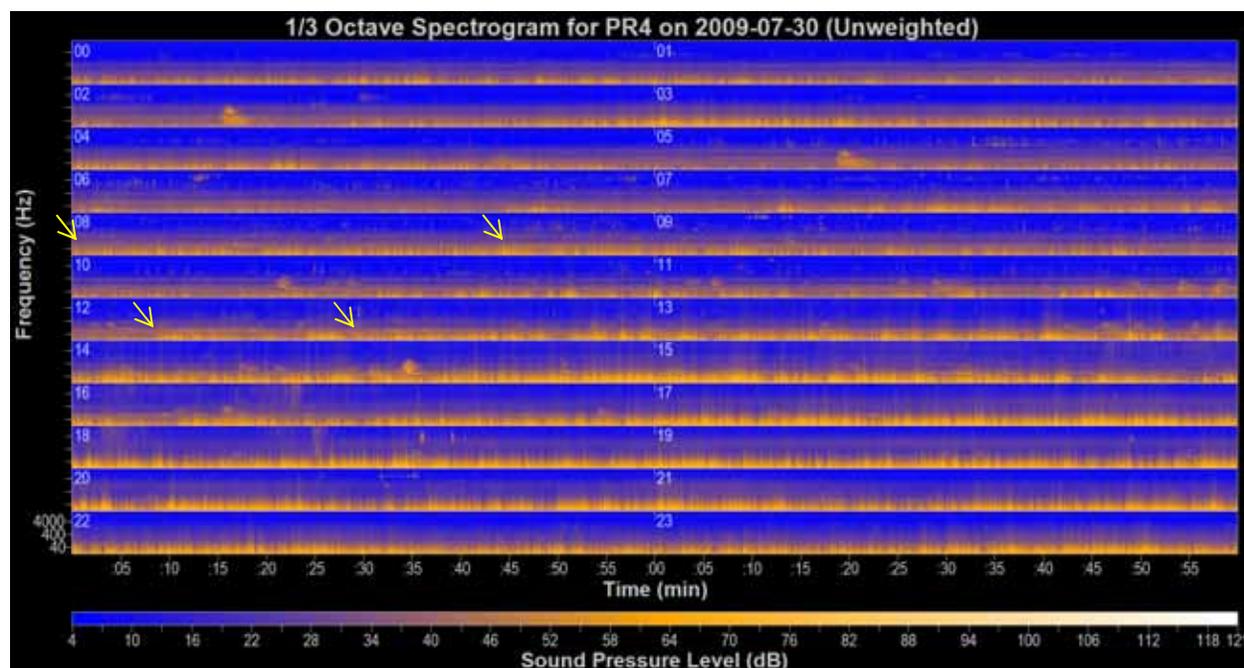
SUPPORTING SOUNDSCAPE-RELATED DATA

SUPPORTING SOUNDSCAPE-RELATED DATA

The John A. Volpe Transportation Center (Volpe) conducted an acoustical study at Point Reyes National Seashore in 2009-2010 to support air tour management plan for the park (Volpe 2011). One of four measurement sites – PORE004 – was located at a bluff on the eastern shore of Drakes Estero, to characterize acoustical conditions in the wetlands that compose approximately one third of the park. This site was on the periphery of DBOC operations, approximately 60 yards from the shoreline and more than 2 miles from the DBOC buildings. High bluffs block the direct line from PORE004 to the DBOC processing facilities; the buildings are not in view, and the direct path for noise is blocked by terrain.

The PORE004 site was not in an ideal location for measuring DBOC boat noise; it was far away from routes that DBOC uses regularly and not placed close to the shore. The Volpe analysis did not focus on quantifying boat noise. NPS comprehensively reanalyzed the PORE004 data to identify all noise events that might be associated with DBOC operations and measured the events that could be unambiguously identified as boat noise. Noise events were detected as visible events in spectrographic images generated from the data. Experienced researchers listened to each event using headphones to confirm the identity of the noise source. For example, in the following spectrogram, boat noise events were identified at 0801, 0845, 1209, and 1228 (faint horizontal lines near the tips of the arrows).

FIGURE I-1. 24-HOUR, ONE-THIRD OCTAVE SPECTROGRAM FOR PORE004 DATA ON JULY 30, 2007



Note: Yellow arrows indicate instances of motorboat noise. These arrows are superimposed over raw data collected for the Volpe 2011 study. This spectrogram displays 24 hours of one-second, 1/3rd octave sound level measurements, with two hours presented in each row. The frequency axis within each row is logarithmic, due to the 1/3rd octave structure of the data; the frequency limits are 12.5 Hz to 20 kHz. The color scaling is also logarithmic, expressed in decibels (dB).

Recordings were available for 28 days during the summer measurements, and 112 boat noise events were identified within the reception range of microphone PORE004. On average, PORE004 recorded four

events per day, each of which was audible for an average of 309 seconds, for a total of 20 minutes 36 seconds of boat noise per day. Recordings were available for 23 days in winter, and 80 events were identified within the reception range of microphone PORE004. On average, PORE004 recorded 3.5 events per day, with an average duration of 355 seconds each, for a total of 20 minutes 42 seconds per day. Additional noise events were detected – some of which may not be due to DBOC boat operations – that added more than 90 minutes per day in the summer and 20 minutes 20 seconds in the winter. Table I-1 presents a list of cumulative noise within the reception range of microphone PORE004 for each day that was analyzed as well as minutes of boat noise detected.

TABLE I-1. BOAT NOISE OBSERVATIONS AS EXTRACTED FROM DATA RECORDED BY PORE004

Date	Minutes of Boat Noise	Minutes of Noise*	Day of the Week	Comment	Date	Minutes of Boat Noise	Minutes of Noise*	Day of the Week	Comment
7/17/2009	2.33	2.33	Fri	<7 hours data	8/14/2009	--	--	Fri	too windy
7/18/2009	33.15	41.55	Sat	S, NW wind	8/15/2009	2.68	109.68	Sat	<19 hours data
7/19/2009	22.43	22.43	Sun	S, NW wind	1/9/2010	0.00	34.03	Sat	<11 hours data
7/20/2009	4.88	4.88	Mon	NW wind	1/10/2010	0.00	36.02	Sun	E wind
7/21/2009	3.95	3.95	Tue	NW wind	1/11/2010	0.00	43.90	Mon	E, SE wind
7/22/2009	0.92	0.92	Wed	NW wind	1/12/2010	0.00	0.30	Tue	SE wind
7/23/2009	26.28	86.10	Thu	W, NW wind	1/13/2010	36.75	38.08	Wed	SW, W wind
7/24/2009	40.45	57.50	Fri	W, NW wind	1/14/2010	73.02	90.15	Thu	Variable wind
7/25/2009	1.80	1.80	Sat	S, NW wind	1/15/2010	43.92	153.92	Fri	E wind
7/26/2009	19.23	79.95	Sun	S, NW wind	1/16/2010	0.00	51.30	Sat	E, SE wind
7/27/2009	12.63	12.63	Mon	S, NW wind	1/17/2010	0.00	4.45	Sun	S, SE wind
7/28/2009	22.87	160.67	Tue	W wind	1/18/2010	0.00	2.50	Mon	S, SE wind
7/29/2009	11.28	145.78	Wed	S, W wind	1/19/2010	4.03	11.22	Tue	S, SE wind
7/30/2009	61.92	127.85	Thu	W, NW wind	1/20/2010	0.00	2.40	Wed	S, SE wind
7/31/2009	26.27	58.47	Fri	NW wind	1/21/2010	--	--	Thu	no data
8/1/2009	38.97	74.93	Sat	W, NW wind	1/22/2010	--	--	Fri	no data
8/2/2009	84.77	170.22	Sun	W, NW wind	1/23/2010	0.00	--	Sat	8 hours data
8/3/2009	12.17	267.72	Mon	NW wind	1/26/2010	6.47	9.38	Sun	E, NE wind
8/4/2009	31.20	505.37	Tue	S, NW wind	1/27/2010	160.30	160.30	Wed	W, NW wind
8/5/2009	23.18	113.62	Wed	W, NW wind	1/28/2010	91.57	91.57	Thu	Variable wind
8/6/2009	19.27	177.25	Thu	W wind	1/29/2010	13.65	71.85	Fri	E, SE wind
8/7/2009	0.00	2.18	Fri	NW wind	1/30/2010	21.25	21.25	Sat	Variable wind
8/8/2009	0.00	385.38	Sat	S, NW wind	1/31/2010	0.00	5.25	Sun	Variable wind
8/9/2009	42.38	197.18	Sun	NW wind	2/1/2010	8.98	8.98	Mon	E, SE wind
8/10/2009	0.00	242.78	Mon	S wind	2/2/2010	20.02	20.02	Tue	E, SE wind
8/11/2009	8.05	21.58	Tue	S, NW wind	2/3/2010	5.25	50.20	Wed	E, SE wind
8/12/2009	6.93	6.93	Wed	NW wind	2/4/2010	--	--	Thu	too windy
8/13/2009	--	--	Thu	too windy	2/5/2010	0.00	45.12	Fri	E, SE wind

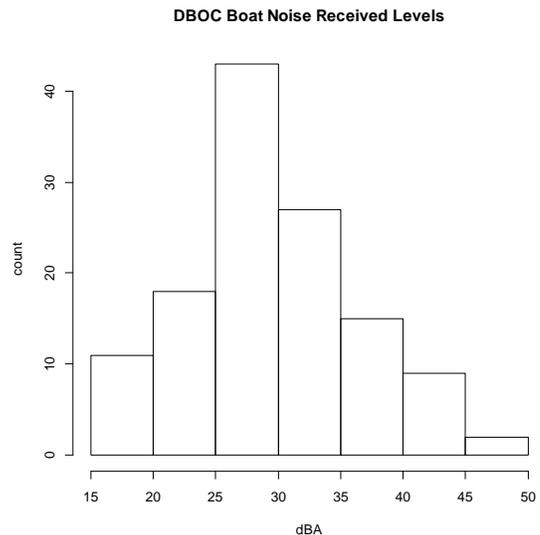
* The aggregate noise figure excludes aircraft and terrestrial vehicular traffic, but it may include some noise sources that are not associated with DBOC operations.
Note: No data is available for January 24-25, 2010 due to the system being offline or malfunctioning.

An impact is considered major in the impact analysis of this EIS if human-caused noise impacts the soundscape for more than 10 percent of a 24-hour day, or 144 minutes. Boat noise within the reception range of PORE004 exceeded this value at PORE004 on one winter day (January 27, 2010); aggregate

noise exceeded this value on eleven days. The PORE004 site was on the periphery of DBOC operations, and the boat noise events reflect boats that were close enough to be heard and unambiguously recognized. Noise tends to refract away from the ground when it travels upwind, so winds from the South, Southeast, and Southwest would be unfavorable for the detection of DBOC boat noise at PORE004.

The peripheral location of the PORE004 site meant that a small fraction of DBOC operations were close to this system, so received levels of the noise were very low. In order to measure the noise levels, NPS marked the unambiguous boat noise events and noise-free intervals that preceded and followed these events for comparison. Received noise levels were calculated by averaging the sound energy within the event, and subtracting out the average energy from noise-free periods on either side of each event that was presumed to represent the background levels. This analysis was restricted to boat noise events that were not overlapped by other noise sources. A total of 169 events met these criteria, of which 125 had sufficient difference between boat and background sound levels to provide a measure of level. A histogram of the boat noise received levels at PORE004 shows that only 24 percent of the boat noise events equaled or exceeded the summer daytime L_{50} level of 34 dBA. There are two reasons why these sounds were audible at PORE004 in spite of their low levels. First, background levels measured on either side of each noise event could have been lower than 34 dBA. Second, previous studies have established that many noises can be audible when the noise dBA value is less than the ambient dBA value (Miller et al. 2003).

FIGURE I-2. DBOC BOAT NOISE RECEIVED LEVELS



Although very little information has been made available regarding the location and activities of DBOC boats, data regarding DBOC boat position and speed were recently presented to the Department for six noise events (Goodman 2012). This additional information can be used to estimate the noise output of the boat as it would have been measured at 50 feet during these events. Spherical spreading loss is the primary factor that decreases noise level with distance, accounting for -20 dB for every 10-fold increase in distance. Atmospheric absorption can be significant at long range, and it varies with frequency and weather conditions. DBOC boats were assumed to have a peak noise level in the 250 Hz $1/3^{\text{rd}}$ octave band, based on data from similar boats measured by Menge et al. 2002 (Figure 34). Climatological averages of 65 degrees F and 81 percent relative humidity from a nearby weather station were used to calculate absorption at 250 Hz using ISO 9613-1 procedures. The resulting absorption coefficient was about -1.7 dBA per mile. The factor in these calculations was the ground effect. Following procedures in ISO 9613-2, the ground effect loss was calculated as -3 dBA for the distant event, and -4 dBA for the five close events. These calculations neglected any losses due to terrain shielding or diffraction of noise at the edge of the bluff between PORE004 and the shoreline. Table I-2 exhibits these calculations for the six noise events

TABLE I-2. CALCULATION OF NOISE EVENTS ON JANUARY 14, JANUARY 15, AND FEBRUARY 2, 2010

Channel	Date	Time	Distance (feet)	Speed (mph)	Event Duration (seconds)	Event L_{eq} (dBA)	Event L_{max} (dBA)	Spreading Loss (dBA)	Absorption Loss (dBA)	Estimated Source L_{eq} (dBA @ 50 feet)	Estimated Source L_{max} (dBA @ 50 feet)
west	1/14/2010	7:31:50	3182	13	518	38.6	43.4	35.4	0.9	78.9	82.9
main	1/14/2010	13:51:34	580	18	138	45.0	47.6	21.3	0.2	70.5	73.1
main	1/14/2010	13:55:44	520	6	178	41.6	50.3	20.3	0.2	66.1	74.8
main	1/15/2010	10:48:00	488	13	482	40.2	51.8	19.8	0.1	64.1	75.7
main	1/29/2010	11:30:00	580	16	283	41.6	59.6	21.3	0.2	67.1	85.1
main	2/2/2010	13:40:00	437	13	1201	34.1	48.7	18.8	0.1	57.1	71.7

Values for estimated average source level (L_{eq}) as well as the peak source level (L_{max}) are provided to offer lower and upper bounds on the reference boat noise level used to model the spatial extent of boat noise in chapter 4. L_{eq} discounts the noise level due to periods of idling and otherwise reduced noise output during noise events. The difference between the L_{eq} and L_{max} estimates is greatest for the longest noise event, which spanned 20 minutes and included several periods when the engine was idling.

The most distant noise event yielded the highest source level. This could be due to an anomalously loud operational condition for the distant event, more efficient transmission of noise downwind (due to refraction), or the unaccounted effects of the bluff on the closer noise events.

REFERENCES

References used in this appendix but not the in main body of the Final EIS are as follows:

Miller, N. P., Anderson, G. S., Hornojeff, R. D., Menge, C. W., Ross, J. C., Newmark, M.
2003 *Aircraft Noise Model Validation Study*. HMMH Report 295860.29, Burlington, MA.