Drakes Bay Oyster Company

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June 5, 2012

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

Re: Responses to April 2012 questions

Dear Cicely,

Drakes Bay Oyster Company (DBOC) received the Point Reyes National Seashore (PRNS) letter dated April 6, 2012 requesting additional information from DBOC for use in the dEIS process. This response letter, together with its attachments, will provide the requested information. DBOC has provided this information in the order requested by the PRNS, with PRNS questions listed first in italics and DBOC responses following in regular typeface. (Please note: Questions 2 (a-f) were responded to directly by Environ.)

1. *As part of your business plan submittal to the NPS on November 15, 2010, Attachment 6a contained revenue, direct expense, overhead expenses, and other income for the years 2005-2010. As part of your submittal, you requested that this information remain confidential. Based on your request that the NPS not publicly disclose DBOC's confidential financial information, we did not report these data in the socioeconomic analysis sections of the Draft EIS. The Atkins peer review report identified the absence of these types of data in the Draft EIS as a deficiency. In order to address the concerns raised in the Atkins peer review report, the NPS requests your permissions to publicly disclose, for purposes of the NEPA process, the revenue, direct cost, indirect cost, and overhead numbers presented in Attachment 6a. In addition, as recommended in the Atkins peer review report, we request that you provide and allow us to disclose in the Final EIS annual reporting of the payroll as a total or as a percentage of the direct costs for each year.*

   DBOC requests that all financial information remain confidential.

   The Atkins peer review report also noted that the market level analyses could be strengthened. In order to better assess the market level impacts, please provide the following information regarding DBOC's contribution to the shellfish market, if available:

a. *Percent product canned vs. percent fresh product sold (annually)*

Approximately 25% of DBOC product is sold in jars and 75% is sold live in the shell.

b. *Percent product sold onsite vs. distributed to local restaurants vs. local vendors (farmer's markets, grocery stores, etc.) vs. other shellfish producers vs. distributors*

Approximately 40% of DBOC income is from onsite retail sales, 40% is sold directly to local market and restaurants – all delivered by DBOC directly, 18% is sold to Tomales Bay shellfish growers, and 2% is sold through a wholesale seafood distributor based in San Francisco.

It is important to note that, in late 2008 through early 2009, the NPS seriously misled the public by telling US Senator Dianne Feinstein, DBOC, and the public, that NPS had a plan and an offer to relocate DBOC to Tomales Bay. In fact, NPS did not consult with CDFG prior to making this assertion and did not have a plan to relocate DBOC. After NPS made the claim that it had a plan to relocate DBOC to Tomales Bay, NPS was informed by CDFG that this relocation was impossible for several reasons: 1) NPS has no authority over the FGC & CDFG leases and has no say over how shellfish leases are issued by the FGC, 2) Tomales Bay shellfish production is already maximized to the extent practicable, 3) there were no available leases in Tomales Bay to relocate DBOC. DBOC, in good faith, participated in discussions, committed to negotiations, and was willing to evaluate a proposal. It was only later that it became clear that the NPS did not have a relocation plan or proposal when it told Senator Feinstein and DBOC that it did. The NPS promised a relocation that was impossible. Nevertheless, the public remains misinformed about this relocation proposal. Members of the public, known to be working closely with NPS staff, continuously criticize DBOC for failing to negotiate with NPS regarding relocation. NPS has certainly heard these misrepresentations from the NPS supporters, yet NPS has failed to correct the public record. As a matter of fact, NPS received multiple public comments on the dEIS with criticisms of DBOC and the Lunny family for refusing to negotiate a relocation to Tomales Bay. These continuous attacks on the Lunny family are a direct result of the NPS false claim that DBOC was offered a relocation plan and could operate in Tomales Bay. The NPS request for information about where DBOC products are sold and DBOC's answers underscore the absurdity of the NPS original false claim that DBOC can relocate to Tomales Bay. The growers in Tomales Bay are purchasing significant amounts of shellfish from DBOC because Tomales Bay production is already maximized and local demand continues to rise. It also reinforces the fact that Tomales Bay shellfish producers cannot come close to meeting local demand. It appears in the dEIS that NPS is making every effort to minimize the local and regional importance of DBOC. The dEIS must be corrected to include: 1) The fact that Tomales Bay growers have already maximized Tomales Bay production, 2) Tomales Bay growers purchase a significant amount of DBOC shellfish so that they can meet the demand for <u>local</u> oysters, 3) The fact that DBOC is the only supplier of local oysters for the Tomales Bay growers, 4) DBOC relocation to Tomales Bay is impossible and, 5) DBOC and the Lunny family actively and honestly considered the NPS claim that NPS would relocate DBOC to Tomales Bay and negotiations ended only when it was recognized that relocating DBOC to Tomales Bay was impossible.

2. *The sound measurement report developed by Environ, on behalf of DBOC, does not specify whether any national or international standards were followed during the collection of these measurements.*

ENVIRON: the sound level measurements were taken using standard measurement equipment and procedures, with DBOC equipment being operated in normal operational modes. The sound level measurement equipment was comprised of a B&K 2250 Type 1 meter that had been factory certified within the past 12 months.

Please note that ENVIRON took the DBOC source sound level measurements quickly, within the time constraints allowed by the comment period of the DEIS, as a means to provide a "reality check" for the "reference" sound levels applied in the noise analysis presented in the DEIS. The comprehensive noise impact and mitigation assessment suggested as being necessary in the ENVIRON comments on the DEIS could include additional source noise measurements that consider all possible equipment operating modes, if necessary.

In order to adequately specify the context for the noise measurements and assess the potential utility of these measurements in the evaluation of the Final EIS, please provide the following information:

a. Please provide a response to the following questions for each of the sound measurements included in the Environ report:

i. Were all measurements made at 50 foot distance from the source, or were some made at other distances with a distance correction applied?

ENVIRON: the source noise sound level measurements were taken at a variety of distances and adjusted to reflect a reference distance of 50 feet.

ii. If a distance correction was applied, what was it?

ENVIRON: the distance from each source was adjusted to a reference distance of 50' using a standard point source attenuation of -6 dBA per doubling of distance.

iii. What was the measurement height of the microphone?

ENVIRON: for each source noise measurement the microphone of the sound level meter was approximately 5' above ground level.

iv. Please describe the ground or water surface between the noise source and the measurement location.

ENVIRON: at the short distances involved in these measurements, the intervening ground surface(s) would have very little effect on sound attenuation rates. But for your information, the measurement distances and intervening surfaces were as described in the following table.

Sound Level Measurement Distances and Ground Surfaces

Sound Source	SLM Distance (feet)	Intervening Ground Surface(s)
Pneumatic Drill	42	SLM from floating raft; intervening surfaces: other rafts and water
Oyster Tumbler	61	SLM from floating raft, grounded on the beach; intervening surfaces: muddy beach
Compressor	50' from bldg. opening	Intervening ground: hard packed soil
Boats	120	Intervening surfaces: beach and water
Front-end Loader	54' from closest portion of passby path	Intervening surface: hard-packed soil

v. What were the wind speeds and direction at the time of measurement?
ENVIRON: winds were light and variable

vi. Was the sound meter upwind, crosswind, or downwind of the noise source?
ENVIRON: winds were light and variable and wind direction varied by measurement. Wind was not a factor that adversely affected the measurements.

b. Boat noise measurements

i. Was the boat moving at a constant speed on a straight line path?
ENVIRON: the two boats considered (one at a time) were moving in a straight line path, approximately perpendicular to the location of the sound level meter.

ii. What was the speed of the boat?
ENVIRON: boat speed is not known; the operator was asked to run at what he considered a "typical cruising speed."

iii. Were any background data collected at this location in the absence of the boat?
ENVIRON: short periods of background sound level data were collected before and after the boat passbys; predominant background sources were gulls, with some lapping water; all other DBOC sources were silent during all the respective source noise measurements

iv. Was the person in the photograph the only load in the boat?
ENVIRON: Yes

v. What is the maximum load carried or towed by these boats?

ENVIRON: DBOC boats sometimes move barges that, with maximum load, can weigh up to 10,000 pounds. Boats pulling barges travel at slower speeds than when they travel unencumbered. It is unclear how noise created by a boat travelling without a load differs from a boat travelling with a load. ENVIRON suggests that it should *not* be assumed without empirical evidence that sounds emitted by boats towing a load are markedly different than unencumbered boats travelling at higher speeds.

c. Front-end loader

i. What was the speed of the front-end loader?

ENVIRON: the speed of the front-end loader is unknown; the operator was asked to use the machine in a typical manner at a typical running speed.

ii. What was the load carried during the test?

ENVIRON: specific load unknown; machine carrying closes to a full bucket load and operating in typical manner

iii. One of the louder measurements captured the dumping of the shells. What was the distance of the measurement location to the shell dump location?

ENVIRON: Precise information is unavailable; the *estimated* distance from the SLM location to the position of the second bucket dump was less than 100'.

d. Pneumatic drill measurements

i. Were the pneumatic drills used to open shellfish during the tests in the manner which they are normally used, or does the measurement reflect the noise generated by the drill operated in air with no load?

ENVIRON: the single pneumatic drill being operated during two sound level measurements was being operated in a typical manner and was being used to break apart clusters of oysters (as they grow on the racks) into individual oysters.

e. Enclosed air compressor

i. Did the 72 second Leq span an interval when the compressor ran continuously?

ENVIRON: yes, the compressor was running continuously during the sound level measurement

ii. If not, do the notes specify what fraction of the interval had air compressor noise?

ENVIRON: not applicable

iii. If the fraction of time that the air compressor was on was not recorded, what was the Lmax?

ENVIRON: not applicable

f. Oyster tumbler measurement

i. Does this measurement reflect the sound of the electric motor alone labeled as the primary noise source in photo 4 on page 3 of the Noise Attachment to the Environ comment document- or was the motor engaged and turning the oyster tumbler?

ENVIRON: the SLM of the oyster tumbler included the motor running and turning the tumbling cylinder and the sound of oyster shells being sorted by this system

ii. Was the wooden enclosure shown in photo 4 on page 3 of the Noise Attachment to the Environ comment document in place when the measurement was made?

ENVIRON: the wooden engine enclosure was in place during the SLM because this is the way this device is typically operated

iii. Please provide either the weight, volume, or number of oysters that were loaded into the oyster tumbler when the measurement was made?

ENVIRON: specific load unknown; tumbler was being operated in typical manner, with oysters being loaded by dumping by hand into the open end of the slowly turning cylinder, and oysters traveling down the cylinder and falling through the holes in the bottom. This device operates at only one speed and cannot be (effectively) operated in a manner that would overload the sorting system.

3. *Additional specific questions are listed below.*

a. In your December 9, 2011 comments, DBOC notes that Figure ES-3 does not show the live shellfish holding facility, including existing concrete, underground tank, and associated plumbing. Please provide additional detail on the dimension, specifications, and location of these structures (tank, plumbing, etc.).

The live holding system was shown as an existing facility on the site plan prepared by William Kirsch, Architect, dated January 27, 2006. This plan was submitted to the CCC for the still pending Coastal Development Permit (CDP) application number 2-06-0003. The NPS was provided a copy of this site plan along with other details of the CDP. The underground tank location and concrete slab are shown on the drawings. We have attached another copy of the drawings for your convenience (3.a.1). Also attached are photos of the 5' wide x 48' concrete slab (3.a.2, 3.a.3), the associated plumbing (3.a.4) and an example of one of the live holding tanks used by DBOC (3.a.5).

b. Page 16 of the DBOC December 9, 2011 letter states that limiting DBOC to two boats and barges with a combined use of 8 hours per day "would cripple DBOC's operations by limiting boat use to a fraction of the current use." This description of

boat operations referenced from the Draft EIS (pg 124) "two motorized boats and two unmotorized barges operated in Drakes Estero, approximately 12 trips per day, 8 hours per day combined" is the NPS understanding of boat operations as expressed by DBOC in the 2009 NAS report and reiterated by DBOC staff to VHB during their site visit on February 19, 2011.

Please provide an updated description representing boat operations, including number of boats and barges, trip durations, number of trips per day, duration of boat operations per day, etc. This applies to both the existing use and any changes that may occur in response to differing levels of production (which DBOC notes would require additional trips).

a. The description of boat operations in the NAS report and the conversations between DBOC staff and VHB/NPS staff generally describes the current boat use in Drakes Estero. Without explanation, the dEIS includes this average boat use as a suggested maximum limit on DBOC boat use. DBOC began with three boats in operation at one time, then reduced to two boats, and currently uses three boats again. Albeit unusual, all boats can be in the Estero all day. Sometimes, boat use is required 7 days a week. On other days, no boats enter the estero at all. As a working farm, DBOC must work around tides, weather, day length, planting season, high demand occasions, etc. The oyster farm has always operated with these variable demands and will continue to in the future. The dEIS does not explain why NPS is attempting to impose these unprecedented restrictions. The NPS must explain exactly why it has included new constraints (maximum number of boats, maximum numbers of hours used, maximum numbers of day per week). Why did the NPS attempt to impose these debilitating restrictions without any communication or consultation with DBOC and without disclosing to the public that they represent mitigations? NPS also asked if boat use may change with differing levels of production. DBOC has answered this question before. Other credible, competent, experienced scientists and business people have also provided comments about this fundamental error in the dEIS that resulted in a list of unnecessary restrictions. Again, the answer (contrary to the assertions made in the dEIS) is that higher production levels may not require more boat trips. For example, a planting trip with more staff and double the amount of seed on a single boat trip could be accomplished in the same time frame. A harvest trip with more staff could harvest double the product in the same time. With additional staff aboard, a crew could maintain twice the product in the same amount of time. Any need for management changes should be considered and determined by an adaptive management team – one that includes CDFG, NOAA and DBOC. Realistically, the variations in production contemplated in the dEIS "action alternatives" would likely have very little effect on boat use.

   Furthermore, the various production levels used to condition the action alternatives are essentially meaningless. DBOC, following consultation with CDFG, provided the CCC and NPS with a submittal that clarified and described DBOC "current production level" (3.b.1). It describes that DBOC current

production could range up to 850,000 pounds of shellfish meats. Shellfish farming is no different than other types of farming – there are many environmental factors that can hurt or help yields. In the case of shellfish farming, weather, larvae quality, ocean conditions, etc. are all out of the control of the farmer and all can affect the harvest levels. All of the arbitrary production limits that the dEIS uses to describe each alternative are all currently possible under present management practices. The NPS is clearly unfamiliar with shellfish farming and the variation in annual yields that are possible, however the NPS should not have ignored the submittal from DBOC that made this quite clear before the NPS initiated the EIS process. The NPS did not consult with DBOC when it wrongly created the action alternatives solely based on a highly variable and largely uncontrollable annual production. It appears NPS did not consult with CDFG or any other individuals familiar with the variability in shellfish yields when NPS chose shellfish production limits in which to base its action alternatives. Production limits may be appropriate for other kinds of businesses – ones for which the output can be closely controlled. Annual yields are largely out of the control of a shellfish farmer. If NPS consulted with DBOC, or considered DBOC's previous written submittals, perhaps a meaningful set of alternatives could have been created for the dEIS. As for boat use, it takes the same effort to plant shellfish – regardless of the subsequent mortality loss. Only minor boat usage differences occur with different production levels in Drakes Estero. Additionally, the NPS must correct the EIS by identifying the fact that 850,000 pounds of shellfish production is within current production levels and should not have been -mischaracterized as an "expansion".

Note: the many commercial agricultural operations within PRNS that also surround Drakes Estero similarly have variations in harvest level. Good weather, nicely timed rain and plenty of sunshine produces lots of grass that results in bigger calves – more pounds of beef sold. Similarly, only a small increase in effort is required to grow the calves. Prohibiting the oyster farm from having a bumper crop (something out of the control of the farmer) would be as unfair and ridiculous as prohibiting a rancher from having big calves (a bumper crop). Action alternatives must be based on meaningful differences with meaningful analyses of the different effects on the human environment. The dEIS failed to comply with this basic requirement of an EIS. This fact has been pointed out by several NEPA experts during the public comment period. The EIS alternatives must be corrected to include the current DBOC operation as the baseline, an alternative that includes the DBOC current request to replace the buildings as approved by NPS in its 1998 NEPA EA, and an alternative to deny the DBOC request and remove the farm. The NPS must also remove the misrepresentation in the dEIS that asserts 850,000 lbs of shellfish meats is an expansion of operations. DBOC has always made it clear, and has provided to NPS in writing, that 850,000 lbs is the upper end of <u>current production</u>. This wrongful NPS claim contributed to the meaningless dEIS action alternatives. Furthermore, just as it would be unfair to limit the ranchers' use of their ranch vehicles and equipment to less than what is needed to continue their permitted businesses, it, too, is unfair to restrict

oyster farm vehicle and equipment use. Any boat restrictions should be removed from the EIS. Boats are already restricted to farm use only. No evidence has been provided to show that changes in the current restriction are necessary. If an adaptive management team, a team that includes individuals familiar with shellfish culture (NOAA, CDFG, DBOC), agrees that modifications to current operations are necessary, DBOC will welcome the advice and participate in developing mitigation.

Although it is extremely troubling to DBOC that NPS is again asking how boat trips could vary with differing production levels, DBOC has answered the NPS question about boat use as associated with annual production. NPS was told before the EIS began that current production levels include up to 850,000 lbs of shellfish meats per year. The NPS was also told by DBOC (as well as other experts in the dEIS comments) that annual shellfish harvest levels can fluctuate, and that current production levels include the possibility 850,000 lbs of shellfish meats. NPS should know that boat use required for up to 850,000 lbs of shellfish meat: 1) is within current production levels; 2) is a baseline activity and, 3) cannot be considered an expansion of operations. NPS has never questioned this fact. The only explanations for the dEIS failure are that NPS has either: 1) not read what has been submitted by DBOC and CCC prior to the EIS and not read the public comments submitted by DBOC, NEPA experts, scientists and shellfish experts on this topic, or; 2) dismissed the comments submitted by DBOC, NEPA experts, scientists and shellfish experts. For whichever reason, this NPS failure to either acknowledge or accept the fact that 850,000 lbs of shellfish meat is within current production level has created fundamental flaws in the entire EIS. NPS has created action alternatives based on misrepresented production levels as their basis, making them invalid; Further, the NPS assertion that 850,000 lbs is an expansion with resulting increased adverse environmental affects is invalid. Additionally, some restrictions and mitigations included in the dEIS are invalid because they are based on this NPS failure to both accept that 850,000 lbs is within the range of possible current production and to understand current shellfish operations. This fundamentally flawed dEIS, with the central foundation of the EIS – the alternatives used to assess and compare the project's effects on the human environment and to gather public comment - is based on incorrect and misleading information. The misinformed public provided NPS with comments that relied on this misinformation

c. *In the table regarding suggested revisions to the DEIS Executive Summary, DBOC states: "Racks required major repairs approximately every 10 years. If all racks were currently in good repair, roughly 10% of the racks would required maintenance each year. Currently, roughly 50% of the racks are in need of immediate repairs. Given that the life of the investment is roughly 10 years, and the proposed SUP is 10 years, the proper business decision would be to make the repairs to all of the racks as*

soon as possible. It is critical that NPS not limit the percentage of the racks repaired in any given year."

Please provide a specific timeline and details for expected rack repair that would be presented consistent with all potential action alternatives. Please provide details on the type of wood (dimension and preservation) DBOC will use for the structures. Please describe the methods to be used for replacing or installing missing posts. Please describe the materials used to attach the lumber within the racks (e.g. nails, screws, bolts, etc.)

Because the racks have an expected lifespan of 10 years before they will require major repair, their cost is amortized over 10 years. It would not be a wise business decision to make major repairs to a rack unless it is guaranteed that DBOC would have nearly 10 years to recover the investment. Moving forward, DBOC plans to make repairs to approximately 50 racks during 2013, 25 racks during 2014 and regular maintenance to all racks each year following. Posts are simply pushed directly into the substrate – no excavation is necessary. Racks are currently fastened with both stainless steel bolts and hot dipped galvanized nails.

The treated wood (ACZA) material was approved for use in rack repairs by the PRNS superintendent in August of 2005 (attachment 3.c.1). The wood material we use is officially approved by NPS. DBOC is willing to work with an adaptive management team to determine if the NPS-approved material continues to be appropriate or not. If not, DBOC will work with the adaptive management team to select a reasonable alternative to this material. The dEIS repeatedly suggests that the treated material used for the racks may be causing harm to the environment. The Atkins review of the dEIS also raised concern about the treated lumber use in Drakes Estero. DBOC and the Lunny family have been publicly and repeatedly criticized for using this material. NPS is aware of these criticisms made by people and organizations working closely with NPS in the effort to create wilderness. Many commenters on the dEIS also criticized DBOC for using these materials. We continue to be confused by these suggestions, since NPS itself specifically approved this material for DBOC use. NPS is allowing the public to attack DBOC and the Lunny family when NPS knows that DBOC has used products approved by NPS. NPS, by its failure to disclose the fact that NPS specifically authorized DBOC to use ACZA lumber in the repairs of the oyster racks, is allowing a misinformed public to oppose DBOC and the continuation of the oyster farm. The dEIS comments verify how NPS has allowed the public to blame DBOC for its use. NPS must correct the EIS by clearly informing the public that NPS authorized the use of these materials in 2005, and that NPS has never withdrawn the DBOC authority to use these materials.

d. What is the overall percentage of oysters produced using the hanging culture method vs. bottom culture method?

Roughly half of the DBOC production originates on racks and is finished in bags on the bottom. The other half begins in floating bags and is finished in bags on the bottom.

e. Please identify the locations that DBOC places hanging culture on the growing beds, the duration that these strings are hardened, and how often they are turned. What percentage of oyster in hanging culture are hardened on the sand bars prior to harvest?

DBOC beach hardens almost all oysters grown on strings or French tubes. The clusters are broken apart, placed in bags, and placed on the bottom. The bags are placed in any approved oyster bed within the lease – they are not limited to specific beds. The time the oysters are kept on the beaches varies – up to about 9 months, turned about every month or two. The racks have been maintained regularly since they were placed in the Estero in the 1950's by the Johnson Oyster Company (JOC). DBOC continued to make significant rack repairs from 2005-2007, until the CCC---working closely with the NPS---abruptly prohibited DBOC from making any rack repairs. When DBOC is allowed to resume the rack repairs, and more racks are again available, the oysters can remain on the racks for a longer period of time and on the beaches for a shorter time. Only about 2 months of beach hardening is necessary, but because of current limited rack space, oysters are removed much sooner to allow for new seed. The repaired racks will reduce the labor hours and boat trips that are required to maintain the more labor intensive bag culture. Put another way, this inexplicable prohibition on rack repair is resulting in increased boat trips, activity, effort and expense on the part of DBOC.

f. In the November 15, 2010 letter 10b – Oyster Production – Bottom Bags, DBOC describes that bottom bag lines are anchored with 1 ½ inch PVC pipe. Photos indicate that cinderblocks are used in some cases. Please provide information on all materials used to anchor bottom-bags and anchor lines.

DBOC occasionally uses cinder blocks as anchors as well as the PVC pipe anchors. DBOC also uses larger concrete anchors. (attachment 3.f.1).

g. Please provide a map depicting the location of areas where DBOC has implemented or plans to use floating culture methods. In addition, please provide a description of the marking and anchoring methods used for the floating culture.

DBOC typically uses the areas in and around the racks for the floating bag culture. Currently, racks that are in poor condition and cannot support strings are used for floating bags. In these cases, the existing posts are used as anchors. Sometimes, the bags are floating between racks, using the racks as anchors. Other floating systems near the racks are secured by concrete anchors. These anchors are approximately 100 pounds each and have a 5/8" rope for attachment (attachment 3.f.1). All floating bags are attached to two 3/8" ropes and all floating systems are attached to at least two anchors. Some floating bag systems are placed on the intertidal beds where they settle on the bottom during low tide and float during high tide.

h. During the VHB site visit with DBOC staff on February 19, 2011, DBOC indicated that nutrients are added during the setting process. What are the nutrients added to enrich the water and at what concentration?

DBOC does not add nutrients during the setting process and does not plan to. DBOC does occasionally add microalgae to the water used inside the single oyster setting system during times that DBOC is recirculating water. The algae provide some food for the juvenile oysters (attachment 3.h.1)

i. In a letter to the CCC on January 31, 2008, you stated that "small numbers of European flat oysters and kumamoto oysters, which were planted by Johnson Oyster Company prior to 2005, still exist within the cultivated area." Are there any non-cultivated European flat oyster or kumamoto oyster remaining in the cultivation area?

At the time of the referenced DBOC letter to the CCC, DBOC was under the belief that the Johnson's grew European flat oysters in Drakes Estero. Later, DBOC was informed by members of the Johnson family, and by CDFG, that no European flat oysters were produced in Drakes Estero. In a later meeting with CCC, DBOC told CCC that JOC had not grown European flat oysters and no European flat oysters have been found in Drakes Estero. DBOC did find a small group of Kumamoto oysters growing in old JOC bags on the bottom. DBOC reported the find to CDFG and CDFG oversaw the removal and destruction of the oysters. DBOC is not aware of any other unauthorized cultured species in Drakes Estero. DBOC has never purchased Kumamoto seed or planted Kumamoto oysters in Drakes Estero. NPS relied solely on an error included in a January 2008 letter from DBOC to CCC that suggested European flat oysters were grown by Johnson Oyster Company. NPS failed to contact CDFG, the agency that oversaw the shellfish operation for the duration of the JOC tenure, to ask specific questions about European flat oysters. CDFG would have told NPS what they told DBOC: JOC did not grow European Flat oysters.

Based on the NPS-funded Sonoma State University dEIS archeology report and the NPS-funded Atkins review, it is apparent that NPS failed to provide the CDFG harvest records from the 1950's and the 1960's. These harvest records show that large numbers (hundreds of thousands) of native Olympia oysters were harvested from Drakes Estero. Moreover, NPS used the aforementioned error in a single DBOC-CCC letter to seriously misinform the dEIS and the Atkins dEIS peer review. A key conclusion made by an Atkins peer reviewer, depending exclusively on the that single error, is inaccurate. That reviewer was led to believe that JOC cultured European flat oysters (an Edulis oyster), and then made his conclusion that these cultured species can be mistaken for the native Olympia oysters (an Edulis oyster) in the shell midden located on-farm at DBOC. Additionally, Sonoma State reported that the carbon dating of all Edulis oyster shell from Drakes Estero middens was shown to be pre-historic and therefore could not have come from JOC operations. Had this reviewer instead been given the correct information that the large numbers of native Olympia oysters in this midden were prehistoric, and that JOC never cultured European Flat oysters, it is almost certain that the reviewer would

have refuted the dEIS assertion that these millions of native oysters were carried by Native Americans from Tomales Bay to the shores of Drakes Estero. Because NPS failed to provide the oyster midden study in time for the publics' review and comment during the dEIS public comment period, NPS misinformation and its dEIS wrongful conclusions remain unchallenged by the public. Furthermore, the Atkins peer reviewer's misinformed and invalid conclusions also remains unchallenged. If the NPS did not selectively conceal the CDFG Drakes Estero harvest records and put forth a misleading DBOC-CCC letter, the conclusions in the dEIS and the Atkins review would have supported the NAS panel's conclusion regarding the existence of native oysters in Drakes Estero. The EIS must be corrected.

j. The current permit includes European flat oyster. Are your currently cultivating European flat oyster in Drakes Estero or do you plan to cultivate European flat oyster in the future?

DBOC does not grow European flat oysters and does not plan to grow this species in the future.

k. Please describe actions that DBOC takes to control and remove Didemnum from the aquaculture materials and from Drakes Estero.

DBOC's plans to capture tunicate fragments from oyster wash water before it returns to the Estero have been requested since as early as 2009. NPS and CCC have not allowed DBOC to replace the existing oyster wash system with the tunicate capture oyster wash system until they issue permits. This new practice will reduce the chance of fragments re-entering the Estero. Oyster bags that have tunicate fouling are kept on shore long enough for the Didemnum to become desiccated prior to re-using the bags.

l. Please describe actions that DBOC takes to prevent escape and naturalization of Manila clams from growing areas.

Most Manila clams on the West Coast are planted directly in the substrate and then covered with a predator net. At harvest time, the net is removed and the clams are dug up from the substrate – either mechanically or by hand. In Drakes Estero, initially by JOC and presently by DBOC, Manila clams are planted in mesh bags. Seed is carefully screened to ensure that only seed larger than the bag mesh size are placed in the bags. Bags are closed ensuring that clams cannot escape.

m. In your February 17, 2012 Coastal Development Permit submittals to the California Coastal Commission, you include details regarding the installation of a 1,050 foot water intake. This intake is considered in the Draft EIS. Please provide a detailed plan on the anchorage method for the pipe, including interval of anchoring, dimension of pipe, and any anticipated maintenance. Please provide information on the screening at the water intake and how the intake and line will be marked.

The seawater intake will be comprised of 2 – 4" black, high density polyethylene, fusion welded pipes, side by side. Two pipes will be used so that bio-fouling inside the pipes can be controlled. Only one pipe will be used at a time. The other pipe will be plugged while not in use. During the time of non-use, the fouling organisms in the idle pipeline will die, thereby allowing for full flow while pipe is in use. The intake will be screened using ¼" mesh screen with 16 square feet of surface area. The flow rate through the intake screen is .005 feet per second (attachment 3.m.1). The pipes will be installed side by side on the Estero bottom. The pipes will be anchored using two concrete anchors (attachment 3.f.1) every 100 feet. The anchors will be buried by hand on each side of the pipelines. The pipes will be fastened securely to the anchors with 3/8" stainless steel cable. The pipes will remain full of water at all times. The intake screen will be located approximately 2' above the bottom of the Estero and will be marked with a buoy secured with a concrete anchor. The intake screen will be maintained approximately two times per year. DBOC previously provided a map showing the proposed location of the seawater intake lines to CCC and NPS. A copy is attached to this letter for your convenience (attachment 3.m.2).

4. Subsequent to the public comment period, you sent the NPS a letter on February 17, 2012 requesting permission to install 12 barbeques on the RUO and SUP areas under the current Special Use Permit. We are aware that you have made this same request to the California Coastal Commission. As you know, the intent with the current EIS process is to evaluate all proposed onshore and offshore activities associated with DBOC. The NPS will consider this request as part of the current EIS planning process. In order to evaluate your request appropriately, please provide a map depicting the proposed location for all picnic tables, barbeques, and the hot ash receptacle.

A site plan was submitted to the CCC on 02/17/12 which shows the current picnic area where DBOC plans to provide BBQ facilities for the visiting public (attachment 4.1). It is clear that NPS is working closely with CCC, and, as is mentioned in the first paragraph of NPS' letter, NPS is reviewing the CCC CDP application as part of the EIS. NPS has, in fact, used letters and submittals from DBOC to CCC in the dEIS. DBOC assumes that CCC provided NPS with a copy of this site plan. However, another copy of that plan is attached for NPS' convenience.

Sincerely,

Kevin & Nancy Lunny

Enclosures