

CALIFORNIA COASTAL COMMISSION

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September 29, 2011

Kevin Lunny
Drakes Bay Oyster Company
17300 Sir Francis Drake Blvd.
Inverness, CA 94937

RE: Compliance with the Coastal Act and **Consent Cease and Desist Order CCC-07-CD-11**
(Drakes Bay Oyster Company)

Dear Mr. Lunny:

Concerns have recently been raised with the California Coastal Commission (“Commission”) regarding non-compliance with the terms and conditions of Consent Cease and Desist Order CCC-07-CD-11 (Drakes Bay Oyster Company) (“the Order”), which was issued to you on December 12, 2007. I have attached a copy of the Order for your convenience. These recent concerns have focused primarily on 1) marine debris in Drakes Estero and on nearby coastal beaches, especially from abandoned, discarded, or fugitive plastic aquaculture materials; and 2) motorized vessel transit in the lateral sandbar channel near the mouth of the Estero during the seasonal restriction period established for harbor seal pupping sites in this area.

Commission staff has received several letters raising these concerns, and at the Commission hearing in Crescent City on September 8, 2011, these issues were raised to the Commission during the Public Comment period when a packet of information was distributed and a presentation was made by representatives of the Environmental Action Committee of West Marin and National Parks Conservation Association. Marine debris, especially plastics, and the use of motorized vessels near sensitive harbor seal areas pose serious threats to marine habitats and wildlife, and we are concerned about these issues in Drakes Estero. I am therefore writing to you to share these concerns and to request that we set up a meeting soon to discuss them and develop some possible solutions.

1. **Marine Debris.** The issue has been raised to the Commission that there is a substantial amount of marine debris in Drakes Estero and on Point Reyes beaches, and that a large portion of this marine debris comprises plastic spacers and other materials used in Drakes Bay Oyster Company’s (DBOC) aquaculture operation. It has been reported to us that on ten days during a three week period, a hiker retrieved from the beaches of the Point Reyes peninsula more than

700 pieces of plastic debris that appear to have originated from DBOC, including black spacer tubes, small-mesh grow-out bags, and polystyrene flotation blocks. This is, of course, of great concern to us, and it is suggestive of possible violations of **Sections 3.2.2** and **3.2.3** of the Order.

Section 3.2.2, Future Abandonment and Removal of Equipment, states that *“To prevent the degradation of oyster cultivation apparatus and the release of debris into Drake’s Estero, within 30 days of cessation of harvesting on any plot that is temporarily taken out of production, Respondent shall remove oyster culture apparatus from that plot except for the permanent structures including oyster racks located within certified harvest areas.*

Section 3.2.3, Removal of Abandoned Equipment, states *“All currently abandoned materials including cultivation equipment/apparatus... shall be removed.”* This Section further required submittal of a Debris Removal Plan that was to include location of debris identified for removal, proposed techniques and equipment to be used for debris removal, and identification of the debris disposal facility. The matter of the Debris Removal Plan was discussed in a letter from you to Commission staff dated November 14, 2008. In this letter, you indicated that all debris from currently abandoned materials would be pulled out by hand, loaded by hand onto a barge or boat, taken to the DBOC dock, loaded onto a truck, and hauled offsite to an approved dump site.

It is not clear to Commission staff at this time what aspect of the DBOC operation is apparently resulting in the release of plastic marine debris. If the marine debris now being found in and near Drakes Estero is coming from abandoned areas or equipment that has not been addressed consistent with the Debris Removal Plan and Order, we would welcome a discussion with you about updating or modifying the Debris Removal Plan to address this issue. If, however, the plastic debris is being released due to improper storage of active-use (non-abandoned) aquaculture equipment at the DBOC facility or some other operational oversight, the dispersion of these new materials throughout the Point Reyes coastal area would constitute new unpermitted development and may require a different set of solutions. In either case, as I’m sure you will agree, the continued presence and release of plastic marine debris poses a hazard to the marine environmental and natural resources of Drakes Estero and needs to be aggressively and comprehensively addressed in the immediate future.

2. **Boat Transit in the Lateral Channel. Section 7.0 of the Order, Compliance with Permits and All Applicable Laws**, states that Respondents shall “comply fully with the terms and conditions of any permit that the Commission or the National Park Service issues in response to the applications referenced in Provisions 5.0 [Coastal Development Permit Application] and 6.0 [National Park Service Special Use Permit] above. Respondents shall also comply with all applicable laws and regulations.” In order to protect the harbor seal population in Drakes Estero, **Section 4(b)(vii)** of the National Park Service (NPS) Special Use Permit (SUP), signed on April 22, 2008, states that the Permittee must avoid disturbance to marine mammals and marine mammal haul-out sites and must maintain a distance of at least 100 yards from hauled-out seals throughout the year (per National Oceanic and Atmospheric Administration recommendations). In addition, during the harbor seal breeding season, March 1-June 30, the designated wilderness area (outside of Permit area) is closed to all boats. Finally,

KEVIN LUNNY

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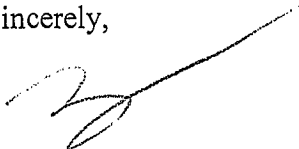
Section 4(b)(vii) of the NPS SUP also states that the Permittee must follow the "Drakes Estero Aquaculture and Harbor Seal Protection Protocol," (attached to the SUP as Exhibit C) which states that "*during the breeding season, March 1 through June 30, the "Main Channel" and "Lateral Channel" of Drakes Estero will be closed to boat traffic.*"

It has been brought to our attention that there have been DBOC boats in the Lateral Channel during this restricted period. A photograph of Drakes Estero recently displayed by Corey Goodman, dated April 26, 2011, and attributed to Todd Pickering and John Hulls, demonstrates the presence of a motorized vessel apparently in support of aquaculture activities within the Lateral Channel of Drakes Estero. In addition, photographs of Drakes Estero taken by NPS and available on their website show motorized vessels in the Lateral Channel of Drakes Estero on at least 20 different days during April and May of 2008 and 2009. The presence of boat traffic in this area during these times is not allowed pursuant to the NPS SUP, and, therefore, is inconsistent with **Section 7.0** of the Order. We are concerned about adverse impacts from the boats and DBOC personnel on the sensitive harbor seals and their habitat during the breeding and pupping season.

We would like to meet with you as soon as possible to discuss these two important issues and to ensure both full compliance with the Order and the Coastal Act more generally, and protection of the aforementioned resources. Please let us know when you would be available to meet with us in our San Francisco offices. As you know, in the past we have raised various concerns with violations of the Order, and we are again anxious to avoid such violations in the future and to work cooperatively with you to achieve compliance and avoid damage to Drakes Estero's many sensitive resources.

Thank you for your cooperation. If you have any questions concerning any enforcement matters, please contact me at **415-904-5269**.

Sincerely,



Jo Ginsberg
Enforcement Analyst

Attachment: Copy of the CDO

cc: Charles Lester, CCC, Executive Director
Alison Dettmer, CCC, Deputy Director, Energy, Ocean Resources, and Federal Consistency Division
Lisa Haage, CCC, Chief of Enforcement
Nancy Cave, CCC, Northern California Enforcement Supervisor
Cassidy Teufel, CCC, Coastal Program Analyst
Cicely Muldoon, Superintendent, Point Reyes National Seashore