

STAFF SUMMARY FOR AUGUST 4-5, 2015

11. CHARLES FRIEND OYSTER CO. LEASE RENEWAL (CONSENT)**Today's Item**Information Action

Receive request from Charles Friend Oyster Company to renew State Water Bottom Lease No. M-430-04 for purposes of aquaculture.

Summary of Previous/Future Actions

- **Today receive lease renewal request** **Aug 4-5, 2015; Fortuna**
- Approval of lease renewal **Dec 9-10, 2015; San Diego**

Background

FGC has the authority to lease state water bottoms to any person for aquaculture for an initial lease term not to exceed 25 years (Sections 15400 and 15405, Fish and Game Code). A lessee shall have a prior right to renew the lease on terms agreed upon between FGC and the lessee (Section 15406, Fish and Game Code).

Charles Friend Oyster Company, Inc. currently holds FGC-issued state water bottom lease M-430-04 for purposes of culturing shellfish in Tomales Bay. The lease is set to expire on February 29, 2016 (Exhibit 1) and the lessee, Mr. Charles Friend, has submitted a request to renew the lease (Exhibit 2).

Upon receipt by FGC, DFW will review the request for possible management or biological considerations, identify any recommended changes to the terms of the leases, and provide its evaluation for FGC consideration later this year. This lease will be updated with the new lease terms and fee structure adopted by FGC in 2011 for shellfish aquaculture.

Significant Public Comments (N/A)**Recommendation (N/A)****Exhibits**

1. [State Water Bottom M-430-04 Lease and Amendments](#)
2. [Charles Friend Oyster Co. request for lease renewal, dated Jan 26, 2015](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the Consent Calendar, items 11-13.

**TO LEASE OF STATE WATER BOTTOMS FOR AQUACULTURE
LEASE NO. M-430-04**

This amendment of aquaculture lease made and entered into as of the 1st day of January 1993, by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "lessor", and Bay Bottom Beds Inc., hereinafter referred to as "Lessee".

W I T N E S S E T H:

WHEREAS, on March 1, 1991, Lessor did enter into Lease Agreement No. M-430-17 with Shellfish Unlimited (a partnership comprised of Point Reyes Oyster Company and Bay Bottom Beds Inc.) for the purpose of cultivating oysters, mussels and clams, and

WHEREAS, Lessee has heretofore informed Lessor that the partnership has been dissolved and the partners have requested that the water bottom acreage contained in said leasehold (123.8 acres) be divided equally between the two partners in two, two 61.9-acre parcels, and

WHEREAS, Lessor has requested at a duly called and noticed hearing of the Fish and Game Commission of the State of California, that the partition and redescription of said lease would be in the best interest of the State of California.

NOW, THEREFORE, THIS AMENDMENT WITNESSETH:

That, in accordance with a request for partition of said lease made by Lessor and accepted at a duly called and noticed hearing of the Fish and Game Commission of the State of California, pursuant to Fish and Game Code Section 15400, Lessor does hereby grant to Lessee the exclusive privilege to cultivate shellfish thereon, and in those certain tidelands of the State of California, described as follows:

All that certain real property situated in the County of Marin, State of California, described as follows:

In Tomales Bay, Marin County, State of California, starting from Bench Mark 8 located at approximately 38°12'38.7" North Latitude, 122°55'22" West Longitude on the Tomales Bay Quadrangle, Marin County, California, U.S. Dept. of the Interior Geological Survey 7.5 minute series topographic map; thence North 83°31' West for a distance of 2,749.3 feet to the top of Preston Point Rock lying off the northeast end of Preston Point; thence South 65°57'51" West 2,128.40 feet to the true point of beginning; thence South 50°27'48" East 807.00 feet; thence N 46°50'24" E 1,028.82 feet; thence N 35°53'07" W 539.10 feet; thence N 29°23'42" E 655.05 feet; thence N 59°41'17" W 670.79 feet; thence S 58°38'08"

W 2,190.75 feet; thence S 51°18'13" E 1078.38 feet; thence N 39°32'12" E 357.16 feet; to the true point of beginning.

This parcel of water bottoms, formerly a portion of Aquaculture Lease No. M-430-17, containing an area of 61.9± acres, more or less, comprises Aquaculture Lease No. M-430-04. (Appendices 1 & 2).

This lease, in accordance with provisions of Fish and Game Code Section 15400, as may from time to time be amended or changed by the State Legislature, is for the sole purpose of cultivating Pacific oyster (Crassostrea gigas), Sumino oyster (C. rivularis), Eastern oyster (C. virginica), flat oyster (Ostrea edulis), Native oyster (O. lurida), Manila clam (Tapes japonica), California sea mussel (Mytilus californianus), and bay mussel (M. edulis), in the previously designated area.

The cultivation of additional species of aquatic plants and animals requires the approval of the Fish and Game Commission. Seed stocks must be certified before planting in compliance with Fish and Game Code Section 15201, and must be planted by Lessee in a manner and at a size approved by Lessor to assure that harvested animals are a product of the lease. A request for certification of planting stock will be submitted by Lessee to the Lessor at least ten (10) days prior to the proposed date of inspection.

Shellfish cultivation methods approved for the lease shall be long lines, rafts, stakes, racks and bags, rack and tray, floats, and bottom culture within the area approved by the Commission. No other mode of operation or culture method is authorized, unless Lessee shall first obtain approval from the Fish and Game Commission.

The required ten (10) day notice of intent to plant shellfish on the lease shall be given to the Department of Fish and Game, Marine Resources Division, 1136 Duer Road, Sebastopol, CA 95473. In addition to the ten (10) day notice, the Marine Unit Manager, Mr. Thomas Moore, telephone (707) 823-9236, shall be given notice at least 24 hours prior to the date of planting, giving details on where the shellfish seed can be inspected.

This amended lease falls within the authorized term of the initial lease of twenty-five (25) years which commenced on the 1st day of March, 1991, and ends on February 29, 2016, for a total rental of two thousand one hundred and sixty-six dollars and fifty cents (\$2,166.50) per year, and a privilege tax on all products harvested as provided by Fish and Game Code sections 8051 and 15406.7. Said annual rental will be payable to Lessor on a fiscal year basis, July 1 - June 30, and within thirty (30) days of the commencement of the lease, or after receipt of the consummated lease agreement. If said annual rental is not paid within sixty

(60) days after the close of the month in which it is due, an additional 10 percent penalty shall be paid. Lessor, at its option, may declare the lease abandoned for failure to pay such rental fees within 90 days from the beginning of the rental period; although such abandonment shall not relieve Lessee of his obligation to pay such rental and penalty which are due and owing. Lessee agrees to pay Lessor reasonable attorney fees and costs incurred in collecting any amounts and/or penalties due and owing from Lessee under the provisions of this lease. Lessee agrees to pay said rent to Lessor at its office in the City of Sacramento, State of California, or at such other place as Lessor may, from time to time, designate.

Lessee expressly recognizes and acknowledges that any payments by Lessee as provided for herein, are subject to the provisions of Fish and Game Code Section 15410, which provides that all leases shall be subject to the power of the Legislature to increase or decrease the rents, fees, taxes, and other charges relating to the lease, but no increase in rent shall be applicable to an existing lease until it is renewed.

This lease is made upon the following terms, conditions and covenants, to wit:

A. This lease may, at the option of the Lessee, be renewed for additional periods not to exceed 25 years each. If Lessee desires to enter into a new lease for a period commencing after expiration of the initial 25-year term, Lessee shall give notice to Lessor one (1) year prior to termination of the lease. The lease may be renewed if, during the notification period, terms for a new lease are agreed upon by Lessee and the Commission.

B. Lessee shall keep records as required in accordance with Fish and Game Code Section 15414, on forms to be supplied by Lessor, and shall maintain adequate accounting records sufficient to determine monies due to Lessor by the 10th day of each month, for all shellfish harvested during the preceding calendar month. Lessor reserves the right to inspect Lessee's premises, equipment, and all books at any time and records of Lessee pertaining to Lessee's cultivation on the leased premises.

C. In order to provide assurance to Lessor that this aquaculture lease is utilized for the purpose stated in the lease application, the lease shall be improved at no less than the minimum rate established by Commission regulations (Appendix 3). This annual rate of planting for shellfish shall be:

Off-bottom culture: 309,500 single seed less than 1 year old
(@ 5,000/acre) or 61.9 cases (@ 80 lbs.
shellstock/case) of seed-bearing shell.

The term of improvement for this lease shall be two years, with the minimum rate of planting for the entire acreage being reached by July 1, 1994. The minimum annual rate of planting for the entire acreage will be maintained thereafter until the end of the lease.

The minimum annual harvest requirement for the lease will be an average of 123,800 (@ 2,000/acre) oysters, clams or other shellfish, effective July 1, 1994.

A minimum rate of planting shall be negotiated for option period. Lessor may declare this lease terminated if Lessee fails to meet these cultivation and harvesting requirements and if Lessee, at any time, is proven to be failing in good faith, to pursue the purpose of this lease.

D. If, at any time subsequent to the beginning date of this lease, the use of cultural devices authorized herein shall fall into a state of disrepair or otherwise become an environmental or aesthetic degradation, as determined by Lessor, then upon written notice by Lessor, Lessee shall have sixty (60) days to repair and correct conditions cited by Lessor. Failure to comply with written notice shall be grounds for termination of this lease and Lessee shall, at the option of Lessor, remove all improvements located on lands covered by this lease.

As a financial guarantee of growing structure removal and/or clean-up expense in the event a lease is abandoned or otherwise terminated, Lessee shall place on deposit, pursuant to the "Escrow Agreement For Clean-up of Aquaculture Leases, Tomales Bay, California", a sum in a proportion that the Lessee's individual acreage bears to the total acreage of specified leased parcels of State water bottoms in Tomales Bay, Marin County, California, until the sum of five thousand dollars (\$5,000.00) is reached. This escrow deposit is established in compliance with Section 7 of the Fish and Game Commission Policy, Awarding of Tomales Bay Aquaculture Leases, adopted January 7¹², 1989 (Appendix 3⁴). Such money shall be deposited over a two-year period, payable one-half upon entering upon the lease, and one-half upon the first anniversary of such inception date. The escrow deposit shall be increased if the Fish and Game Commission determines that, if abandoned, any particular culture operation is likely to be more expensive to remove. The escrow deposit may be reduced by the Commission upon demonstration that the probable cost of removal of all improvements would be less than the deposit previously required. In its annual proof of use report, the Lessor shall advise the Commission of its best estimate of the probable cost of removal for each lease operation. The escrow agreement, escrow holder, and escrow depository shall be agreed upon by the Executive Director of the Fish and Game Commission, the Lessor and Tomales Bay Shellfish Growers Association.

It shall be the responsibility of the Lessee to maintain the specified security balance at the level established by the Commission, regardless of the number of lessees who continue in aquaculture operations within the bay.

If Lessee abandons this lease without removing growing structures therefrom, the escrow deposit shall be expended to remove growing structures, or otherwise clean, or in the alternative, the remaining lessees in Tomales Bay and the Tomales Bay Shellfish Growers Association may undertake the clean-up, leaving the secured amount whole.

In order to assure compliance with the escrow provisions of this lease, Lessee shall dedicate to the agreed upon escrow account specified in the "Escrow Agreement For Clean-up of Aquaculture Leases, Tomales Bay, California (Addendum 1), hereby attached to and made part of this agreement, a total of four hundred forty-nine dollars and fifty cents (\$449.50), a sum proportional to Lessee's total lease acreage of sixty-one and nine-tenths (61.9) acres. This amount equals one-half of the amount, eight hundred ninety-nine dollars (\$899.00), deposited in the "Tomales Bay Escrow Account" by the former partnership (Shellfish Unlimited).

E. Lessee shall observe and comply with all rules and regulations now or hereinafter promulgated by any governmental agency having authority by law, including but not limited to, State Water Resources Control Board, U.S. Coast Guard, and U.S. Army Corps of Engineers. Any other permits or licenses required by such agencies will be obtained by Lessee at his own sole cost and expense.

F. Lessee recognizes and understands in accepting this lease, that its interest therein may be subject to a possible possessory interest tax that the county may impose on such interest, and that such tax payment shall not reduce any rent or royalty due to the Lessor hereunder, and any such tax shall be the liability of, and be paid by, Lessee.

G. Any modification of natural or existing features of the real property described in this lease, which is not consistent with the authorized uses under this lease, is expressly prohibited without prior written consent of the Lessor.

H. As evidence of progress in aquaculture, Lessee shall submit each year to the State at the Marine Resources Division Office, 1136 Duer Road, Sebastopol, CA 95473, a written declaration under penalty of perjury, showing the date and amount of each type of aquaculture development and date and amount of designated

species comprising each planting, including a diagram showing area, amounts, and dates planted. Such declaration shall be submitted on or before July 15 of each year for the previous year, July 1 - June 30, inclusive.

I. This lease shall be canceled at any time Lessee fails to possess a valid aquaculture registration issued pursuant to Fish and Game Code Section 15101. Lessee agrees not to commit, suffer or permit any waste on said premises, or any act to be done thereon in violation of any laws or ordinances. This lease shall be subject to termination by Lessee at any time during the term thereof, by giving Lessor notice in writing at least ninety (90) days prior to the date when such termination shall become effective. In the event of such termination by Lessee, any unearned rental shall be forfeited to the Lessor.

J. This lease of State water bottom only grants Lessee the exclusive right to cultivate and harvest the specified species of oysters, mussels, and clams authorized in the original lease agreement.

K. The lease shall be clearly marked with buoys or stakes to prevent interference with boating or fishing activities that may take place in the area. Minimum marking of the lease shall include: One (1) buoy or stake on each of the four corners of the lease. All buoys or stakes used to define the boundaries of the lease shall be marked in conformance with the International Association of Lighthouse Authorities Maritime Buoyage System regulations (33 CFR sections 62.33 and 66.01-10). Lessee shall make application of the U.S. Coast Guard, Aids to Navigation Branch, 400 Ocean Gate, Long Beach, CA 90822, for approval of the buoys and stakes to be established on this lease. Each buoy or stake shall be set and maintained to extend at least three (3) feet above the surface of the water at mean-higher high water. All buoys or stakes shall bear the Aquaculture Lease No. M-430-04.

If buoys or stakes used to mark this lease are lost, displaced or otherwise removed from the lease area, they must be replaced within a two-week period, weather conditions permitting, or the lease may be subject to abandonment proceedings.

L. In compliance with sections 1,2, and 3 of the Policy, Awarding of Tomales Bay Aquaculture Leases, adopted by the Fish and Game Commission at its meeting on January 12, 1989 (Appendix 3), Lessee agrees to cooperate with the Lessor in the monitoring of the health of eel grass beds located on the lease and in conducting a study to gather baseline sedimentation data on eel grass beds lying within the lease boundary. Lessee further agrees to participate with the Lessor in the design, implementation, and operation of a study to collect baseline information on sedimentation occurring within the leasehold during the period

July 1, 1990 and June 30, 1994, and the monitoring of wintering shorebirds during the period November 1 to February 28 each year, adequate to measure any population or use changes due to lease operations.

If any of the environmental monitoring programs discussed above indicate, or any other reliable information leads the Lessor to conclude that Lessee's aquaculture operation is directly associated with a significant adverse change in the Tomales Bay ecosystem, Lessor shall notify the Executive Director of the Fish and Game Commission and the Lessee of such findings. Upon receipt of notice, Lessee shall take all necessary steps to modify, relocate or discontinue the operation in accordance with the Lessor's advice, unless Lessee demonstrates that its aquaculture operations are not a substantial factor, directly or cumulatively, causing the adverse environmental change. Failure to promptly respond shall be grounds for termination of the lease.

M. In addition to the conditions and restrictions herein provided for in this lease, and any right or privilege granted, conveyed or leased hereunder shall be subject to, and Lessee agrees to comply with all applicable provisions of the California Fish and Game Code, and regulations of the Fish and Game Commission, in particular Fish and Game Code sections 15400-15415, inclusive, and expressly recognizes the right of the Legislature and the Fish and Game Commission to enact new laws and regulations. In the event of any conflict between the provisions of this lease and any law or regulation enacted in the future, the latter will control.

N. This lease is personal to the Lessee and shall not be transferred, assigned, hypothecated, or subleased, either voluntarily or by operation of law, without prior approval of the Fish and Game Commission.

O. In the event of any breach by Lessee of any of the provisions hereof, other than the payment of any sum due from Lessee to Lessor hereunder, which breach is not remedied, abated and cured by Lessee within 60 days after notice in writing, shall cause this lease to thereupon cease and terminate.

P. The attached Nondiscrimination Clause (OCP-1) is hereby made a part of this agreement.

Q. All notices herein provided to be given or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, certified and postage prepaid and addressed as follows:

To the Lessor

DEPARTMENT OF FISH AND GAME
1416 Ninth Street
Sacramento, CA 95814

To the Lessee

LISA JANG
Bay Bottom Beds Inc.
966 Borden Villa Dr. #103
Santa Rosa, CA 95401

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other, as hereinbefore provided.

R. Lessee hereby indemnifies and holds harmless the Lessor, its officers, agents, and employees against any and all claims and demands of every kind and nature whatsoever, arising out of, or in any way connected with the use by Lessee of said lease, or the exercise of the privilege herein granted.

IN WITNESS WHEREOF, the parties have caused this amendment to said aquaculture lease to be executed as of the day and year first above written.

APPROVED:

FISH AND GAME COMMISSION

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME

By: Robert R Treman

By: Dawn Christel
Lessor

BAY BOTTOM BEDS CO. INC.

By: Lisa Jang
Lessee

By: _____

ALL-PURPOSE ACKNOWLEDGMENT

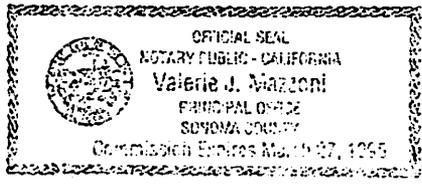
No. 5179

State of California
County of Sonoma

On 02/18/93 before me, Valerie J. Mazzoni Notary Public
DATE NAME, TITLE OF OFFICER - E.G., JANE DOE, NOTARY PUBLIC

personally appeared Lisa Jang
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.
Valerie J. Mazzoni
SIGNATURE OF NOTARY

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER(S) Sec. Treasurer TITLE(S)
- PARTNER(S) LIMITED GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:

Title or Type of Document Te Lease of State Water Bottom
Number of Pages 15 Date of Document 01/01/93
Signer(s) Other than Named Above None

ADDENDUM TO
AQUACULTURE LEASE
BETWEEN
DEPARTMENT OF FISH AND GAME, LESSOR
AND

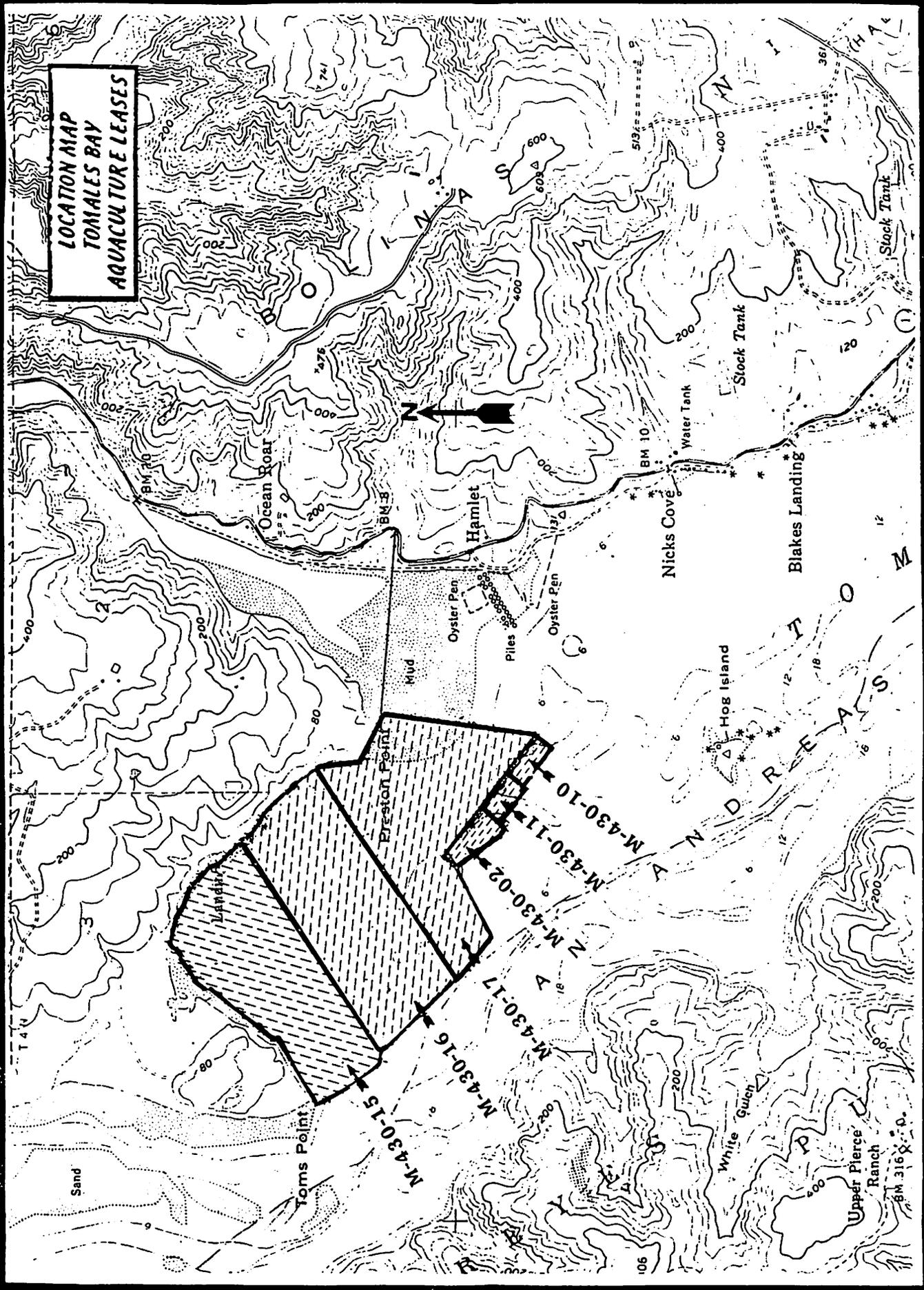
BAY BOTTOM BEDS COMPANY

NONDISCRIMINATION CLAUSE

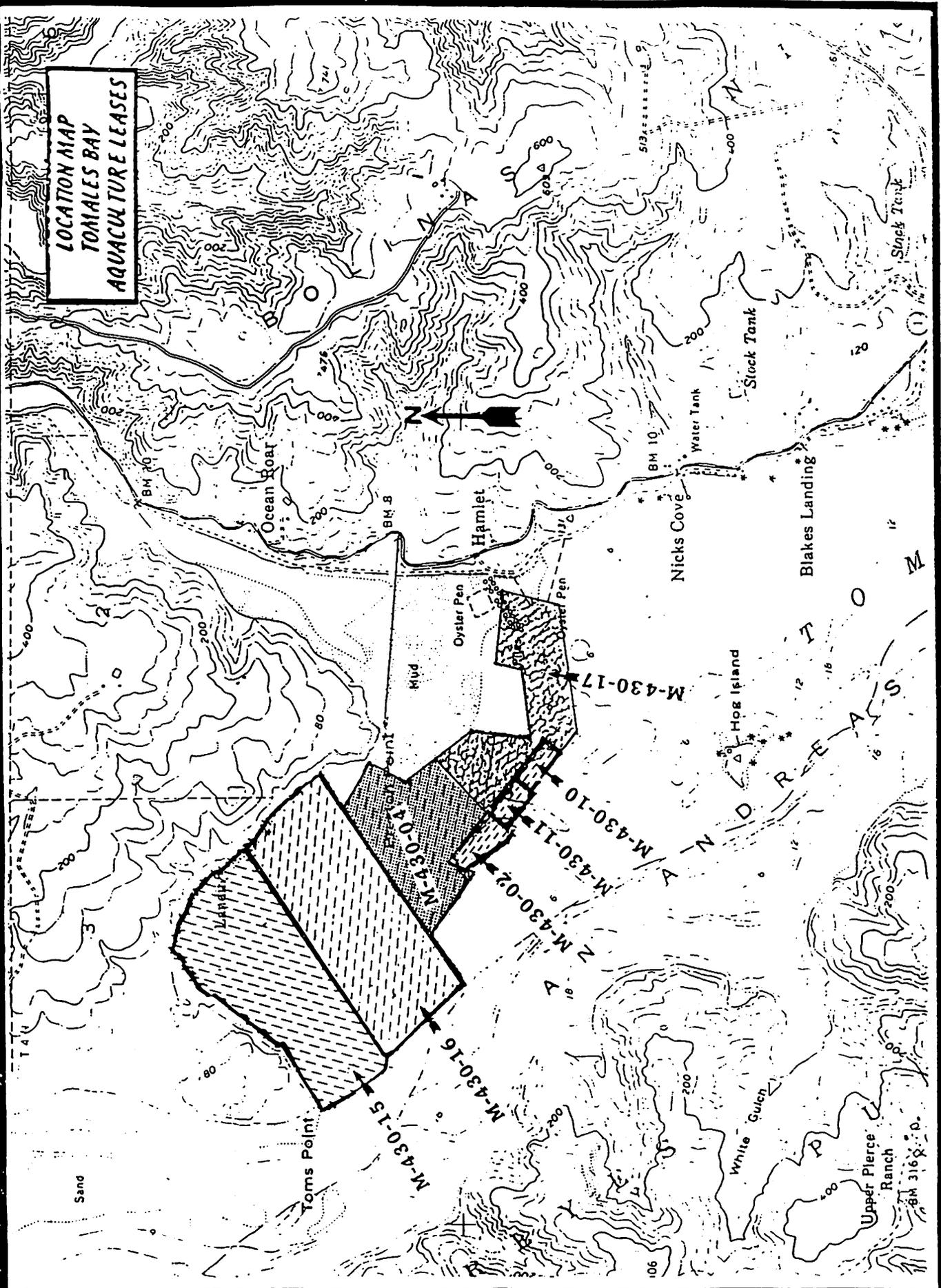
(OCP - 1)

1. During the performance of this contract, contractor* and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 2. This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.
- * All references to "contractor" shall be deemed to be Lessee.

**LOCATION MAP
TOMALES BAY
AQUACULTURE LEASES**



**LOCATION MAP
TOMALES BAY
AQUACULTURE LEASES**



ADDENDUM TO
AQUACULTURE LEASE
BETWEEN
DEPARTMENT OF FISH AND GAME, LESSOR
AND
SHELLFISH UNLIMITED
ESCROW AGREEMENT FOR
CLEANUP OF AQUACULTURE LEASES
TOMALES BAY, CALIFORNIA

(Addendum 1)

This Escrow Agreement is being entered into as of the 1st day of March, 1991, between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor", and Shellfish Unlimited, hereinafter referred to as "Lessee", and Tomales Bay shellfish Growers Association, a California Nonprofit Corporation now forming, hereinafter referred to as the "Association."

Lessee has entered into an aquaculture lease this 1st day of March, 1991, for the lease of State water bottoms situated in Tomales Bay, Marin County, State of California, more particularly described as Lease No. M-430-17.

This Escrow Agreement is subject to Lease No. M-430-17 and in accordance with Paragraph D thereof.

As a financial guarantee of growing structure or other lease improvement removal and/or cleanup expense in the event that the aforementioned aquaculture lease is abandoned or otherwise terminated, the parties agree as follows:

1. Lessee will deposit or cause to be deposited in escrow in cash or by certified check, funds totaling \$899.00, which funds will consist of the following:

- (a) \$449.50 deposited upon entering upon the lease;
- (b) \$449.50 deposited upon the first anniversary of such inception date.

In the event that Lessor fails to deposit funds as required by Subparagraphs (a) or (b) herein, Lessor may terminate Lessee's aquaculture lease by giving sixty days notice to Lessee by registered or certified mail.

2. Mr. F. Robert Studdert shall act as Escrow Agent and shall place the escrow deposits in an interest-bearing account in the West America Bank, North Gate Branch, at San Rafael, California, subject to disposition as hereinafter provided. Such deposits shall be retained in a separate account designated "Tomales Bay Cleanup Fund" by Escrow Agent as trustee for Lessor, and shall designate the Association as the beneficial owners.

3. The Association shall be responsible for paying all fees and expenses incurred by Escrow Agent in administering the escrow account. These expenses and payment terms shall be determined by the Association and Escrow Agent.

4. The interest earned on the trust account held in escrow and all interest earned on that interest shall be for the sole account of the Association and may be withdrawn by the Association at any time for distribution to its members without notice to Lessor.

5. Lessees shall make payments to the Escrow Agent on account of the Tomales Bay Cleanup Fund in the manner prescribed in paragraph 1(a) and (b) until the sum of five thousand dollars (\$5,000.00) is reached. Thereafter, the Tomales Bay Cleanup Fund shall be maintained by the Lessees at Five Thousand Dollars (\$5,000.00) as hereinafter provided, regardless of the number of lessees who continue in aquaculture operations in Tomales Bay.

6. When Lessees deposit funds into escrow, Escrow Agent shall notify Lessor in writing within ten days of receipt thereof.

7. Escrow Agent shall notify Lessor and Association in writing when two thousand five hundred dollars (\$2,500.00) has been deposited to the escrow account and provide written verification from the bank of such deposit. Thereafter, on the anniversary date of such initial notification, Escrow Agent shall report and certify the balance of funds on deposit accompanied by the accounting records provided by the banking institution of deposit.

8. The Lessor may increase or decrease the security amount held in escrow upon cause shown therefor and sixty days notice to the Association. Lessee's annual Proof of Use Report shall contain a reasonable estimate of the cost of removal of growing structures from each operation. Any increase required by the Lessor shall be deposited by the Lessees in the same proportion as provided in Paragraph 1; and any decrease shall be returned to the Lessees by the Escrow Agent in the same proportion provided in Paragraph 1.

9. Should Lessee transfer his interest under the lease with the approval of the California Fish and Game Commission, Escrow Agent shall transfer such escrow deposit to the successor in interest, and thereafter notify all parties hereto of such transfer. The successor in interest shall have all of the rights and obligations of Lessee with respect to such escrow deposit.

10. If, on termination of an aquaculture lease, Lessee removes all growing structures and improvements within sixty days, Lessee's escrow deposit shall be returned to Lessee by Escrow Agent no later than two weeks after receipt of written notice by Escrow Agent from Lessor authorizing such return.

11. If at any time during the lease term, any Lessee abandons a lease without removing growing structures and improvements, Lessor and/or Association shall do one of the following acts:

- (a) The Association may undertake the cleanup, within sixty days, of the abandoned lease and Lessor shall not resort to the escrow security;
- (b) Lessor shall appropriate and apply any portion of the escrow security as may be reasonably necessary to fund the cleanup;

(c) Lessor may elect to have growing structures and improvements remain in place and return Lessee's escrow deposit as provided in Paragraph 10.

12. Lessor shall have a right to draw upon the escrow account in the event of default by the Lessees. Upon seven days written notice to the Escrow Agent from the Lessor of the default, Escrow Agent must immediately distribute funds as instructed by Lessor.

13. Should Lessor actually resort to any monies contained within the escrow account under any of the above applicable provisions, Lessees agree to deposit to the escrow account, in the same proportion as provided in Paragraph 1, the amount for which resort to the escrow security was had and necessary to restore the escrow security to the original sum required hereunder in thirty days after written demand by Lessor, except upon disbursement on account of return of escrow security to any Lessee as provided in Paragraph 10.

Restoration of escrow security shall be postponed during any period that Lessor re-advertises for bid and subsequently re-awards any Tomales Bay aquaculture lease. Upon Lessor granting a lease to a successful bidder, the Lessee thereunder shall assume the obligations and rights of his predecessor Lessee, including, but not limited to, the deposit of funds as prescribed in Paragraph 1(a) and (b).

Lessor shall not award or re-award a lease until the notice of deposit required by Paragraph 6 is received.

14. Escrow Agent shall rely on the written notifications from the Lessor and the Association, and the Lessor and the Association shall hold Escrow Agent harmless when Escrow Agent releases and disburses funds and interest pursuant to such a written notification.

15. Any notice required to be given under this Escrow Agreement may be given by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested. Notice shall be deemed communicated as of mailing. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this paragraph.

To the Lessor:

DEPARTMENT OF FISH AND GAME
1416 Ninth Street
Sacramento, CA 95814

To the Association:

TOMALES BAY SHELLFISH GROWERS
ASSOCIATION
P. O. Box 829
Marshall, CA 94940

To the Escrow Agent:

F. ROBERT STUDDERT
36 Professional Center Parkway
San Rafael, CA 94903

To the Lessee:

Lisa Jang
SHELLFISH UNLIMITED
966 Borden Villa Drive, #103
Santa Rosa, CA 95401

16. At the time this Escrow Agreement is executed by all parties, the Lessor shall deliver to the Escrow Agent a fully executed counterpart of this agreement.

In witness whereof, the parties have executed this Agreement by their proper officers on the date first set forth above.

LESSOR: Karyn A. Meyer
Acting Asst. Director, Admin.

ASSOCIATION: _____

LESSEE: Lisa Jang
Martin G. Spain

INDIVIDUAL ACKNOWLEDGMENT

NO. 201

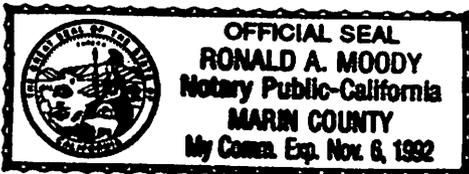
State of Calif.
County of Marina } SS.

On this the 4 day of February 1991, before me,

Ronald A. Moody
the undersigned Notary Public, personally appeared

Martin G. Spain

personally known to me
 proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) he subscribed to the within instrument, and acknowledged that he executed it. WITNESS my hand and official seal.



Ronald A. Moody
Notary's Signature

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:

Title or Type of Document lease of state water M-430-17
Number of Pages 13 Date of Document signed 2-4-91
Signer(s) Other Than Named Above _____

**AMENDMENT NO. 1
TO
INDENTURE OF LEASE**

This amendment of Aquaculture Lease made and entered into as of the 1st day of April 1996, by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor", and Bay Bottom Beds Incorporated, hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, on March 1, 1991, Lessor did enter into Lease Agreement No. M-430-17 with Shellfish Unlimited (a partnership comprised of Point Reyes Oyster Company and Bay Bottom Beds Incorporated) for the purpose of cultivating oysters, mussels and clams, and

WHEREAS, on December 4, 1992 The Fish and Game Commission approved dissolution of the partnership and decreed that said leasehold (123.8 acres) be divided equally between the two partners in two, two 61.9-acre parcels and

WHEREAS, on February 5, 1993 the Fish and Game Commission of the State of California approved the reconfiguration and redescription of said 61.9 acre parcels to eliminate non-productive areas, and

WHEREAS, The Fish and Game Commission at its meeting on October 7, 1994 adopted new administrative procedures to standardize annual proof-of-use reporting and the rental period for aquaculture leaseholds, and approved revision of the Escrow Agreement for Cleanup of Aquaculture Leases in Tomales Bay (Addendum 1), and determined that the amendment of this aquaculture agreement would be in the best interest of the State.

NOW THEREFORE, THIS AMENDMENT WITNESSETH:

That, in accordance with actions taken by the Fish and Game Commission of the State of California, pursuant to Fish and Game Code Section 15400, Lessor does hereby amend said lease for such consideration, specific purposes and subject to covenants, terms, conditions, reservations, restrictions and limitations as are set forth herein.

This amended lease falls within the authorized term of the initial lease, twenty-five (25) years, which commenced on the 1st day of March 1991, and ends on February 29, 2016, for a total rental of two thousand one hundred and sixty-six dollars and fifty cents (\$2,166.50) per year, and a privilege tax on all products harvested as provided by Fish and Game Code sections 8051, 18406.5, and 15406.7. Beginning January 1, 1997, said annual rental fee will be payable to Lessor on a calendar year basis, January 1 -- December 31. The next annual rental fee will be due July 1, 1996, and will cover the period July 1, 1996 to December 31,

1996 in the amount of one thousand eighty-three dollars and twenty five cents (\$1,083.25). If said annual rental fee is not paid within sixty (60) days after the close of the month in which it is due, an additional 10 percent penalty shall be paid. Lessor, at its option, may declare the lease abandoned for failure to pay such rental fees within 90 days from the beginning of the rental period; although such abandonment shall not relieve Lessee of its obligation to pay such rental and penalty which are due and owing. Lessee agrees to pay Lessor reasonable attorney fees and costs incurred in collecting any amounts and/or penalties due and owing from Lessee under the provisions of this lease. Lessee agrees to pay said fee(s) to Lessor at its office in the City of Sacramento, State of California, or at such other place as Lessor may, from time to time, designate.

This lease is made upon the following additional terms, conditions, and covenants, to wit:

H. As evidence of progress in aquaculture, Lessee shall submit each year to the State at the Marine Resources Division office, P. O. Box 1560, Bodega Bay, California 94923, a written declaration under penalty of perjury, showing the date and amount of each type of aquaculture development and date and amount of designated species comprising each planting, including a diagram (map) showing area, amounts, and dates planted. Such annual proof-of-use shall be submitted on or before February 1 of each year for the previous year, January 1 -- December 31, inclusive.

P. All notices herein provided to be given or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, certified and postage prepaid and addressed as follows:

To the Lessor

DEPARTMENT OF FISH AND GAME
1416 NINTH STREET
SACRAMENTO, CALIFORNIA 95814

To the Lessee

LISA JANG
BAY BOTTOM BEDS COMPANY
966 BORDEN VILLA DRIVE, SUITE 103
SANTA ROSA, CALIFORNIA 95401

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other, as hereinbefore provided.

Except as herein amended, all other terms of said lease agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this amendment to said aquaculture lease to be executed as of the day and year first above written.

APPROVED:

FISH AND GAME COMMISSION

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME

By: _____

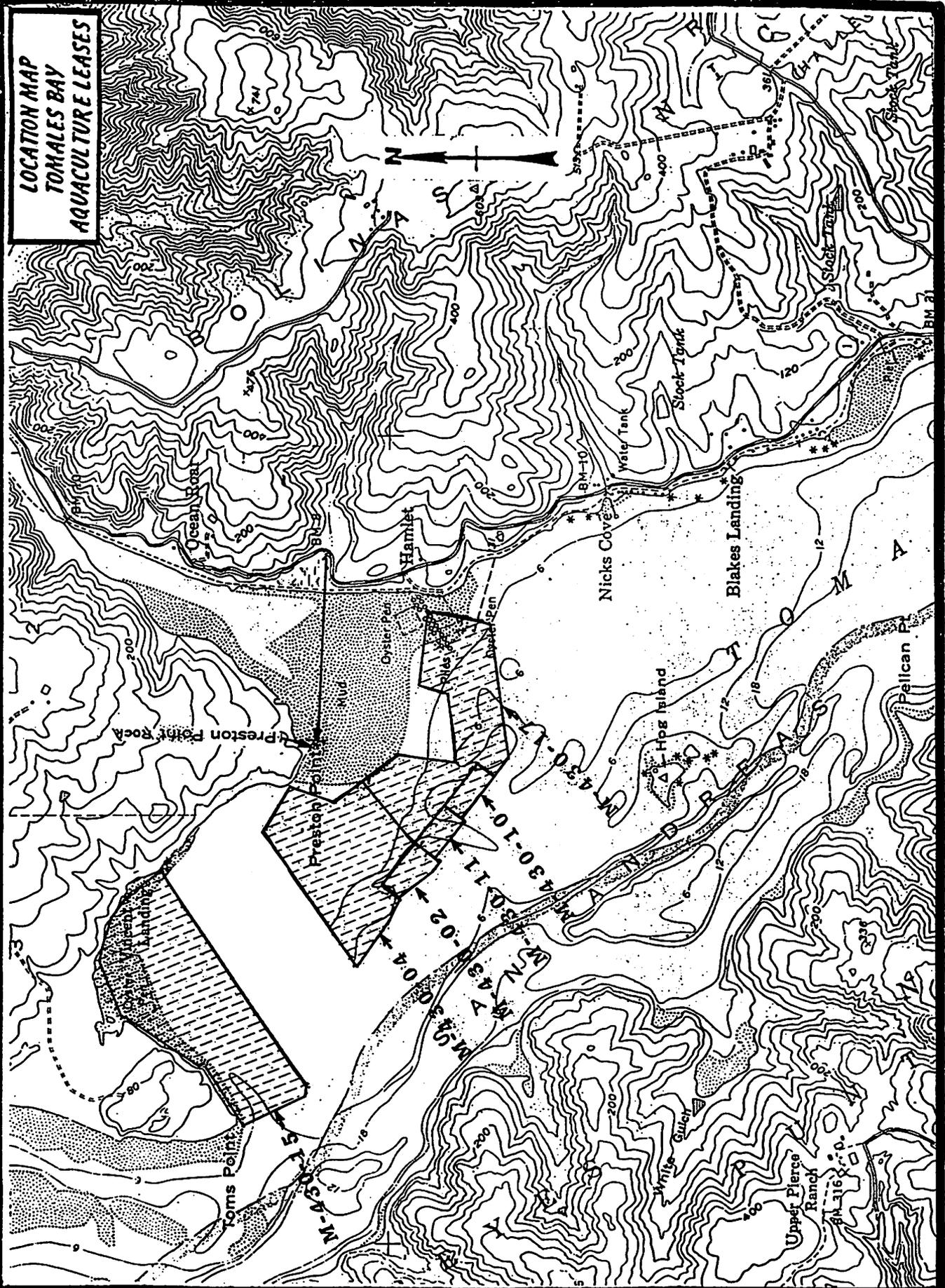
By: _____

BAY BOTTOM BEDS INCORPORATED

By: _____

By: _____

**LOCATION MAP
TOMALES BAY
AQUACULTURE LEASES**



**ADDENDUM TO
AQUACULTURE LEASE
BETWEEN
DEPARTMENT OF FISH AND GAME, LESSOR
AND
BAY BOTTOM BEDS COMPANY
ESCROW AGREEMENT FOR
CLEANUP OF AQUACULTURE LEASES
TOMALES BAY, CALIFORNIA**

(Addendum 1)

This Escrow Agreement is being entered into as of the 1st day of April 1996, between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor", and Bay Bottom Beds Company hereinafter referred to as "Lessee", and California Aquaculture Association a California Nonprofit Corporation, hereinafter referred to as the "Association."

Lessee has entered into an agreement for the lease of State water bottoms for aquaculture situated in Tomales Bay, Marin County, State of California, more particularly described as Lease No. M-430-04.

This Escrow Agreement is subject to Lease No. M-430-04 and in accordance with Paragraph D thereof.

As a financial guarantee of growing structure or other lease improvement removal and/or cleanup expense in the event that the aforementioned aquaculture lease is abandoned or otherwise terminated, the parties agree as follows:

1. Lessee will deposit or cause to be deposited in escrow in cash or by certified check, funds totaling \$450.00, which funds will consist of the following:

- (a) \$225.00 deposited upon entering upon the lease;
- (b) \$225.00 deposited upon the first anniversary of such inception date.

In the event that Lessee fails to deposit funds as required by Subparagraphs (a) or (b) herein, Lessor may terminate Lessee's aquaculture lease by giving sixty days notice to Lessee by registered or certified mail.

2. The Treasurer of the California Aquaculture Association shall act as Escrow Agent for Lessees who are association members in good standing and shall place the escrow deposits in an interest-bearing account in the Union Bank Branch, at Brawley, California, subject to disposition as hereinafter provided. Such deposits shall be retained in a separate

account designated "Tomales Bay Cleanup Fund" by Escrow Agent as trustee for Lessor, and shall designate the Association as the beneficial owners.

3. The Tomales Bay Lessees contributing to the "Tomales Bay Cleanup Fund" shall be responsible for paying all fees and expenses incurred by Escrow Agent in administering the escrow account. These expenses and payment terms shall be determined by the Tomales Bay Lessees and Escrow Agent.

4. The interest earned on the trust account held in escrow and all interest earned on that interest shall be for the sole account of the Tomales Bay Lessees and may be withdrawn by the Escrow Agent at any time for distribution to Association members, who are Tomales Bay Lessees, without notice to Lessor.

5. Lessees shall make payments to the Escrow Agent on account of the Tomales Bay Cleanup Fund in the manner prescribed in paragraph 1(a) and (b) until the sum of five thousand dollars (\$5,000.00) is reached. Thereafter, the Tomales Bay Cleanup Fund shall be maintained by the Lessees at Five Thousand Dollars (\$5,000.00) as hereinafter provided, regardless of the number of lessees who continue in aquaculture operations in Tomales Bay.

6. When Lessees deposit funds into escrow, Escrow Agent shall notify Lessor in writing within ten days of receipt thereof.

7. Escrow Agent shall notify Lessor and Association in writing when two thousand five hundred dollars (\$2,500.00) has been deposited to the escrow account and provide written verification from the bank of such deposit. Thereafter, on the anniversary date of such initial notification, Escrow Agent shall report and certify the balance of funds on deposit accompanied by the accounting records provided by the banking institution of deposit.

8. The Lessor may increase or decrease the security amount held in escrow upon cause shown therefor and sixty days notice to the Tomales Bay Lessees. Lessee's annual Proof of Use Report shall contain a reasonable estimate of the cost of removal of growing structures from each operation. Any increase required by the Lessor shall be deposited by the Lessees in the same proportion as provided in Paragraph 1; and any decrease shall be returned to the Lessees by the Escrow Agent in the same proportion provided in Paragraph 1.

9. Should Lessee transfer his interest under the lease with the approval of the California Fish and Game Commission, Escrow Agent shall transfer such escrow deposit to the successor in interest, and thereafter notify all parties hereto of such transfer. The successor in interest shall have all of the rights and obligations of Lessee with respect to such escrow deposit.

10. If, on termination of an aquaculture lease, Lessee removes all growing structures and improvements within sixty days, Lessee's escrow deposit shall be returned to Lessee by

Escrow Agent no later than two weeks after receipt of written notice by Escrow Agent from Lessor authorizing such return.

11. If at any time during the lease term, any Lessee abandons a lease without removing growing structures and improvements; Lessor and/or Association shall do one of the following acts:

- (a) The Association may undertake the cleanup, within sixty days of written notification from Lessor that said lease is abandoned, and Lessor shall not resort to the escrow security account.
- (b) Lessor, after sixty days have elapsed, as defined in paragraph 11(a), may appropriate and apply any portion of the escrow security account as may be reasonably necessary to fund the cleanup;
- (c) Lessor may elect to have growing structures and improvements remain in place and return Lessee's escrow deposit as provided in Paragraph 10.

12. Lessor shall have a right to draw upon the escrow account in the event of default by the Lessees. Upon seven days written notice to the Escrow Agent from the Lessor of the default, Escrow Agent must immediately distribute funds as instructed by Lessor.

13. Should Lessor actually resort to any monies contained within the escrow account under any of the above applicable provisions, Lessees agree to deposit to the escrow account, in the same proportion as provided in Paragraph 1, the amount for which resort to the escrow security was had and necessary to restore the escrow security to the original sum required hereunder in thirty days after written demand by Lessor, except upon disbursement on account of return of escrow security to any Lessee as provided in Paragraph 10.

Restoration of escrow security shall be postponed during any period that Lessor re-advertises for bid and subsequently re-awards any Tomales Bay aquaculture lease. Upon Lessor granting a lease to a successful bidder, the Lessee thereunder shall assume the obligations and rights of his predecessor Lessee, including, but not limited to, the deposit of funds as prescribed in Paragraph 1(a) and (b).

Lessor shall not award or re-award a lease until the notice of deposit required by Paragraph 6 is received.

14. Escrow Agent shall rely on the written notifications from the Lessor and the Association, and the Lessor and the Tomales Bay Lessees shall hold Escrow Agent and Association harmless when Escrow Agent releases and disburses funds and interest pursuant to such a written notification.

15. In the event that any legal action is pursued in relation to this Escrow Agreement, the parties hereby agree to pay their own attorney's fees and legal costs regardless of who prevails.

16. Any notice required to be given under this Escrow Agreement may be given by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested. Notice shall be deemed communicated as of mailing. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this paragraph.

To the Lessor:

DEPARTMENT OF FISH AND GAME
1416 Ninth Street
Sacramento, California 95814

To the Association:

CALIFORNIA AQUACULTURE ASSOCIATION
P. O. Box 1004
Niland, California 92257

To the Escrow Agent:

THE TREASURER
CALIFORNIA AQUACULTURE ASSOCIATION
P. O. Box 1004
Niland, California 92257

To the Lessee:

BAY BOTTOM BEDS, INC.
966 Borden Villa Drive, #103
Santa Rosa, California 95401-4401

17. At the time this Escrow Agreement is executed by all parties, the Lessor shall deliver to the Escrow Agent a fully executed counterpart of this agreement.

In witness whereof, the parties have executed this Agreement by their proper officers on the date first set forth above.

LESSOR:

ASSOCIATION:

LESSEE:

COMMISSIONERS
Richard T. Thieriot, President
San Francisco
Michael Chrisman, Vice President
Visalia
Douglas B. McGeoghegan
Maxwell

GRAY DAVIS
Governor



ROBERT R. TREANOR
EXECUTIVE DIRECTOR
1416 Ninth Street
Box 944209
Sacramento, CA 94244-2090
(916) 653-4899
(916) 653-5040 Fax

STATE OF CALIFORNIA

Fish and Game Commission

October 14, 1999

Mr. Charles Friend
180 Montecito Avenue, #104
Oakland, California 94610

Dear Mr. Friend:

The Commission, at its October 8, 1999, meeting in Redding, approved the request of Bay Bottom Beds for authorization to transfer title of its State Water Bottom Lease (M-430-04), Tomales Bay, to you. The Department of Fish and Game will be completing the new lease agreement and sending it to you for your signature in the near future.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Robert R. Treanor".

Robert R. Treanor
Executive Director

cc: LB Boydston, Intergovernmental Affairs Office
Marine Region - Monterey
Bob Hulbrock, Aquaculture Coordinator
Fred Wendell, Marine Region - Morro Bay
Lisa Jang, Bay Bottom Beds

AMENDMENT NO. 2
TO
INDENTURE OF LEASE

This amendment of Aquaculture Lease is made and entered into as of the 8th day of October 1999, by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor", and Charles Friend, hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, on February 5, 1993, Bay Bottom Beds, Incorporated did gain the exclusive privilege of cultivating specified shellfish on Lease M-430-04 created through the partition, reconfiguration and redescription of one-half of lease M-430-17, and

WHEREAS, Bay Bottom Beds, Incorporated applied to the Fish and Game Commission for authority to transfer title of Bay Bottom Bed's State Water Bottom Lease (M-430-04), Tomales Bay, to Charles Friend, and

WHEREAS, the Fish and Game Commission at its meeting on October 8, 1999, authorized the transfer of title from Bay Bottom Bed, Incorporated to Charles Friend;

NOW, THEREFORE, in accordance with actions taken by the Fish and Game Commission of the State of California, pursuant to Fish and Game Code Section 15400, Lessor does hereby amend said lease for such consideration, specific purposes, and subject to the additional covenants, terms, conditions, reservations, restrictions, and limitations as are set forth herein, and does hereby grant to Lessee the exclusive privilege to cultivate shellfish thereon, and in those certain lands of the State of California, described as follows:

All that certain real property situated in the County of Marin, State of California, described as follows:

In Tomales Bay, Marin County, State of California, starting from Bench Mark 8 located at approximately 38°12'38.7" North latitude, 122°55'22" West Longitude on the Tomales Bay Quadrangle, Marin County, California, U.S. Dept. of the Interior Geological Survey 7.5 minute series topographical map; thence North 83°31' West for a distance of 2749.30 feet to the top of Preston Point Rock lying off the northeast end of Preston Point; thence South 65°57'51" West 2128.40 feet to the true point of beginning; thence South 50°27'48" East 807.00 feet; thence North 46°50'24" East 1028.82 feet; thence North 35°53'07" West 539.10

feet; thence North 29°23'42" East 655.05 feet; thence North 59°41'17" West 670.79; thence South 58°38'08" West 2190.75 feet; thence South 51°18'13" East 1078.38 feet; thence North 39°32'12" East 357.16 feet; to the true point of beginning

This parcel of water bottoms, containing an area of 61.9 acres more or less, comprises Aquaculture Lease No. M-430-04

This lease, in accordance with provisions of Fish and Game Code Section 15400, as may from time to time be amended or changed by the State Legislature, is for the sole purpose of cultivating Pacific oyster (*Crassostrea gigas*), Sumino oyster (*C. rivularis*), Eastern oyster (*C. virginica*), flat oyster (*Ostrea edulis*), Native oyster (*O. lurida*), Manila clam (*Tapes japonica*), California sea mussel (*Mytilus californianus*), and bay mussel, (*Mytilus edulis*) in the previously designated area.

The cultivation of additional species of aquatic plants and animals requires the approval of the Fish and Game Commission. Seed stocks must be certified before planting in compliance with Fish and Game Code Section 15201, and must be planted by Lessee in a manner and at a size approved by Lessor to assure that harvested animals are a product of the lease. A request for certification of planting stock will be submitted by Lessee to the Lessor at least ten (10) days prior to the proposed date of inspection.

Shellfish cultivation methods approved for the lease shall be longlines, rafts, stakes, rack and bag, rack and tray, floats, and bottom culture within the area approved by the Commission. No other mode of operation or culture method is authorized, unless Lessee shall first obtain approval from the Fish and Game Commission.

This lease is made upon the following additional terms, conditions, and covenants, to wit:

D. If, at any time subsequent to the beginning date of this lease, the use of culture devices authorized herein shall fall into a state of disrepair, or otherwise become an environmental or aesthetic degradation, as determined by Lessor, then upon written notice by Lessor, Lessee shall have sixty (60) days to repair and correct conditions cited by Lessor. Failure to comply with written notice shall be grounds for termination of this lease and Lessee shall, at the option of Lessor, remove all improvements located on lands covered by this lease.

As a financial guarantee of growing structure removal and/or clean-up expense in the event a lease is abandoned or otherwise terminated, Lessee shall place on deposit, pursuant to the "Escrow Agreement For Cleanup of Aquaculture Leases, Tomales Bay, California", a sum in a proportion that the Lessee's individual acreage

bears to the total acreage of specified leased parcels of State water bottoms in Tomales Bay, Marin County, California, until the sum of five thousand dollars (\$5,000.00) is reached. This escrow deposit is established in compliance with Section 7 of the Fish and Game Commission Policy, Awarding of Tomales Bay Aquaculture Leases, adopted January 7, 1989. Such money shall be deposited over a two-year period payable one-half upon entering upon the lease and one-half upon the first anniversary of such inception date. The escrow deposit shall be increased if the Fish and Game Commission determines, that, if abandoned, any particular culture operation is likely to be more expensive to remove. The escrow deposit may be reduced by the Commission upon demonstration that the probable cost of removal of all improvements would be less than the deposit previously required. In its annual proof of use report, the Lessor shall advise the Commission of its best estimate of the probable cost of removal of each lease operation. The escrow agreement, escrow holder, and escrow depository shall be agreed upon by the Executive Director of the Fish and Game Commission, the Lessor and Tomales Bay Shellfish Growers Association.

It shall be the responsibility of the Lessee to maintain the specified security balance at the level established by the Commission, regardless of the number of lessees who continue in aquaculture operations within the bay. Since Bay Bottom Beds, Incorporated transferred their interest under the lease with the approval of the California Fish and Game Commission, the Escrow Agent shall transfer such escrow deposit to the successor in interest, Charles Friend, and thereafter notify all parties hereto of such transfer. The successor in interest shall have all of the rights and obligations of Lessee with respect to such escrow deposit.

If Lessee abandons this lease without removing growing structures therefrom, the escrow deposit shall be expended to remove the growing structures, or otherwise clean up the lease, or in the alternative, the remaining lessees in Tomales Bay and the Tomales Bay Shellfish Growers Association may undertake the clean-up leaving the secured amount whole.

P. All notices herein provided to be given or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, certified and postage prepaid and addressed as follows:

To the Lessor

DEPARTMENT OF FISH AND GAME
1416 NINTH STREET
SACRAMENTO, CALIFORNIA 95814

To the Lessee

CHARLES FRIEND
180 MONTECITO AVE. #104
OAKLAND, CALIFORNIA 94610

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other, as hereinbefore provided.

Q. Lessee hereby indemnifies and holds harmless the Lessor, its officers, agents, and employees against any and all claims and demands of every kind and nature whatsoever, arising out of, or in any way connected with the use by Lessee of said lease, or the exercise of the privilege herein granted.

R. The lease does not imply that any guarantee is given that shellfish may be grown and harvested for human consumption. The Lessor only has the statutory authority to enter into aquaculture leases (Fish and Game Code Section 15400 et. seq.). The California Department of Health Services has the authority (Health and Safety Code Section 28500 et. seq.) to certify and regulate sanitary procedures followed in the harvesting, handling, processing, storage, and distribution of bivalve mollusk shellfish intended for human consumption.

Lessee must recognize that compliance by certified shellfish harvesters with the conditions and procedures set forth in the Department of Health Service's current "Management Plan for Commercial Shellfishing in Tomales Bay, California and in the current "Contingency Plan for Marine Biotoxins in California Shellfish" is mandatory. These conditions and procedures establish classifications for certification to harvest shellfish (oyster, mussels and clams) and establish rainfall closure rules which may delay or prevent harvesting of cultured organisms from this lease and are a condition of the Shellfish Growing Area Certificate .

S. The Nondiscrimination Clause (OCP-1) identified as item P in the original terms, conditions, and covenants is hereby relocated as item S for clarity between amendments.

Except as herein amended, all other terms of said lease agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this amendment to said aquaculture lease to be executed as of the day and year first above written

APPROVED:

FISH AND GAME COMMISSION

By: _____

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME

By: _____
Lessor

CHARLES FRIEND

By: _____
Lessee

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION

2015 JAN 26 PM 1:44

MLS

Mr. Sonke Mastrup
Executive Director
California Fish and Game Commission
P.O.Box 944209
Sacramento, CA 94244-2090

From: Charles (Tod) Friend
Charles Friend Oyster Company
180 Montecito Ave. #104
Oakland, CA 94610, (510) 406-0006

January 20, 2015

Subject: Request for renewal of F&G Commission lease M-430-04

Dear Mr. Mastrup:

I write today to formally request that the California Fish & Game Commission consider the renewal of their lease M-430-04 located on Tomales Bay, West Marin, California to Charles Friend and the Charles Friend Oyster Company. Charles Friend is presently the 'Lessee' as per "Amendment No.2 to Indenture of Lease", entered into as of the 8th day of October 1999, and before The Commission.

Please advise me at your earliest convenience as to any further Notice required of me to the Commission itself, other Departments or parties prior to the Commission's consideration of this Renewal request.

Sincerely,

Charles Friend



1/20/15