

## STAFF SUMMARY FOR FEBRUARY 10-11, 2016

**11. POINT REYES OYSTER CO. LEASE (CONSENT)****Today's Item**Information Action 

Approve requests from Point Reyes Oyster Company, Inc. to:

- (A) renew state water bottom lease No. M-430-13 for a period of 15 years; and
- (B) renew state water bottom lease No. M-430-17 for a period of 15 years.

**Summary of Previous/Future Actions**

- Received lease renewal requests Aug 4-5, 2015; Fortuna
- **Today approve renewal requests Feb 10-11, 2016; Sacramento**

**Background**

FGC has the authority to lease state water bottoms that grant exclusive privilege to any person for conducting aquaculture pursuant to Fish and Game Code sections 15400 and 15405. 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).

In 2011, FGC approved a new lease template that specified terms to be applied to new leases as well as lease renewals (Exhibit 1). FGC also established an associated 15-year lease term with subsequent 10-year renewal term, and annual lease rental rates based on high, moderate, and low productivity classifications (\$50, \$100, or \$150 per acre, respectively), with a provision that the State may review and recalculate lease rental rates no more frequently than every five years. The tenant is required provide to the State financial assurance sufficient for site clean-up if the lease is terminated or abandoned.

Point Reyes Oyster Company, Inc. currently holds three FGC-issued state water bottom leases in Tomales Bay for purposes of culturing shellfish; two of these leases are set to expire on Feb 29, 2016:

1. Lease No. M-430-13 (Agenda Item 11(A), Exhibit 2), and
2. Lease No. M-430-17 (Agenda Item 11(B), Exhibit 3).

The lessee, Mr. Martin Strain, has submitted a request to renew both leases (Exhibit 5).

DFW has reviewed the current leases and request for renewal and has provided recommendations for each lease (exhibits 6 and 7). No changes to lease provisions or operations are proposed and, as a result, DFW has determined that both proposed projects are subject to a categorical exemption from CEQA. Each renewed lease would be subject to the new lease template, set a renewed lease term of 15 years, and set the annual rental rate based on the productivity classification determined by DFW based on 2015 productivity. Additionally, the new lease terms require financial assurances sufficient to cover site clean-up under lease termination or abandonment (Section 25, Exhibit 1). DFW will conduct a site survey to confirm existing structures, obtain a third-party estimate for clean-up, and adjust the current financial securities (Exhibit 4) if needed, as required in the lease terms.

## STAFF SUMMARY FOR FEBRUARY 10-11, 2016

**Significant Public Comments**

1. Previous commenters have recommended that all lease renewals require that financial securities be reviewed to ensure full coverage of potential future clean-up costs, and that best management practices be adopted and followed.

**Recommendation**

**FGC staff:** Approve both lease renewals, as recommended by DFW. The lease template addresses financial securities as suggested by public commenters; separately develop best management practices in conjunction with the lease template (see Agenda Item 7).

**DFW:** Approve both lease renewals.

**Exhibits**

1. [Lease template for State water bottom leases](#)
2. [State Water Bottom Lease No. M-430-13 and amendments \(A\)](#)
3. [State Water Bottom Lease No. M-430-17 and amendments \(B\)](#)
4. [Point Reyes Oyster Co. security deposit \(A and B\)](#)
5. [Point Reyes Oyster Co. request for lease renewals, received Feb 5, 2015](#)
6. [DFW memo regarding Lease M-430-13, received Jan 13, 2016 \(A\)](#)
7. [DFW memo regarding Lease M-430-17, received Jan 13, 2016 \(B\)](#)

**Motion/Direction**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission adopts the consent calendar, items 8 - 11.

RECORDING REQUESTED BY AND )  
WHEN RECORDED MAIL TO: )  
 )  
State of California )  
Fish and Game Commission )  
P.O. Box 944209 )  
Sacramento, CA 94244-2090 )

Space Above Line for Recorder's Use Only

**LEASE GRANTING THE EXCLUSIVE PRIVILEGE  
OF CONDUCTING AQUACULTURE AT  
STATE WATER BOTTOM NO. M-000-00**

THIS LEASE GRANTING THE EXCLUSIVE PRIVILEGE OF CONDUCTING AQUACULTURE AT STATE WATER BOTTOM NO. M-000-00 ("Lease") is made and entered into as of [DATE], by and between [NAME], ("Tenant") and the California Fish and Game Commission ("State") with reference to the following facts:

**RECITALS**

Tenant wishes to lease a State Water Bottom for the purpose of propagating, cultivating, maintaining and harvesting aquatic plants and/or animals in marine waters of the state.

Fish and Game Code section 15400 authorizes the State to lease to any person the exclusive privilege to conduct aquaculture in any designated State Water Bottom if it determines that such lease is in the public interest.

[New lease]: On [DATE] the State awarded the lease for State Water Bottom No. M- 000-00 to Tenant.

[Renewal]: On [DATE(s)] the State authorized renewal of the Lease for State Water Bottom No. M-000-00 to Tenant.

[Other]: On [DATE] [Note here any other significant events concerning the lease, e.g. amendment, assignment or designation of successor-in-interest.]

**TERMS AND CONDITIONS**

- 1. LEASE.** The State hereby grants to Tenant the exclusive privilege to conduct aquaculture upon State Water Bottom No. M-000-00, subject to the terms and conditions of this Lease.
- 2. DESCRIPTION.** This Lease covers that area comprising approximately 000.00 acres designated as State Water Bottom No. M-000-00 and shown on the Map and Description attached as **Exhibit A**, which is made a part of this Lease by this reference.
- 3. TERM.** This Lease is for a period of 0.00 years commencing on [START DATE] and ending on [END DATE], unless renewed or sooner terminated in accordance with its terms.
- 4. ANNUAL RENT.** The base rent for the Lease area is \$000.00 per acre, calculated

to recover Tenant's share of the State's operational costs of the aquaculture bottom leasing program attributable to shellfish cultivation. The base rent shall be annually adjusted in the following manner:

The Department of Fish and Wildlife shall determine the change in the "Implicit Price Deflator for State and Local government Purchases of Goods and Services," as published by the U.S. Department of Commerce, for the quarter ending March 31 of the current year compared to the quarter ending March 31 of the previous year. The relative amount of the change shall be multiplied by the amount of the annual rent.

No more frequently than at five-year intervals, the State, in its sole discretion, may recalculate the productivity classification by which the annual rent is calculated for Tenant to reflect changes in the State's operational costs of the aquaculture bottom leasing program attributable to shellfish cultivation. The 10-year average oyster production values fall into three productivity classifications:

- High productivity = >100,000 oysters/acre = \$150.00 per acre/year
- Moderate productivity = >20,000-99,000 oysters/acre = \$100.00 per acre/year
- Low productivity = >2,000-19,999 oysters/acre = \$50.00 per acre/year

Whenever such formula is updated, the annual rent first charged Tenant thereafter shall become the new base rent, subject to the foregoing adjustments for inflation thereafter.

Notice of the annual adjusted rent for the upcoming calendar year shall be given to Tenant by December 1. Until the notice of the annual adjustment is provided, Tenant remains obligated to pay rent at the previous rate. Pursuant to Fish and Game Code section 15407, the annual rent shall be paid within 30 days of the commencement date in Section 3, and within 30 days of each anniversary. Tenant shall remit such rent to: Department of Fish and Wildlife, Fiscal and Administrative Services Branch, 1416 Ninth Street, 12<sup>th</sup> Floor, Sacramento, California 95814 RE: State Water Bottom Lease No. M-000-00.

Payment shall be made to the State in lawful money of the United States, provided that, if any payment made by a check, draft or money order is returned to The State due to insufficient funds or otherwise, the State shall have the right, upon written notice to Tenant, to require Tenant to make all subsequent payments in cash, or by cashier's or certified check.

**5. LATE PAYMENT.** Annual payment of rent is due and payable on the commencement date of this Lease or any anniversary thereafter, and is timely if received by the State within thirty (30) days of such commencement date or anniversary. Any annual payment not received by the State within thirty (30) days of the Lease commencement date or anniversary thereof, regardless of whether the 30th day falls on a Saturday, Sunday or holiday, will be subject to a late penalty consisting of an administrative charge on the late amount, calculated at the rate of five percent (5%) of the amount of the late payment. The parties agree that the late charge represents a fair and reasonable estimate of the costs the State will incur because of late payment. Acceptance of the late charge by the State shall not constitute a waiver of Tenant's default for the overdue amount, nor prevent the State from exercising other rights and remedies granted under this Lease. Tenant shall pay the late charge as additional rent

within 30 days of the due date of the original payment.

Any annual payment not received by the State within ninety (90) days of the commencement date of the Lease or within ninety (90) days of any anniversary thereof shall constitute a breach of Lease, giving rise to the State's remedies as set forth herein.

Annual rent due to the State, if not received by the State within ninety (90) days following the due date, will bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate legally permitted. Interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that legally permitted. Payment of interest shall not excuse nor cure any default by Tenant.

Upon written request by Tenant to the State, demonstrating unusual or extenuating circumstances causing the late payment, the State, in its sole discretion, may waive the late charge.

**6. INSURANCE.** Tenant shall furnish to the State certificate(s) of insurance stating that Public Liability Insurance is presently in effect for the Tenant and will be in effect throughout the period of this Lease with a combined single liability limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, and shall insure against all liability of Tenant and its employees and agents arising out of or in connection with Tenant's use and occupancy of the leased Lease area. The certificate(s) of insurance shall:

(a) Be furnished to the State by the insurance companies, and no such policy shall be cancelable or subject to reduction of coverage or other modification except after 30 days prior written notice to the State.

(b) Include the State of California, its officers, agents, employees and servants are included as additional insured but only insofar as the operations under the Lease are concerned.

(c) Provide that the State shall not be responsible for any premiums or assessments on any policy of insurance hereunder.

(d) Comply with those standards as determined by the State of California, Department of General Services, Office of Risk and Insurance Management.

Tenant agrees that the insurance required herein shall be in effect at all times during the term of this Lease, at the cost of Tenant. In the event said insurance, or any of it, expires or lapses at any time during the term of this Lease, the Tenant agrees to provide, no later than fifteen (15) days after said expiration or lapse, written evidence of required insurance coverage from the date of loss of the earlier insurance and continuing for not less than the remainder of the term of the Lease. Tenant's failure to keep in effect at all times all insurance required by this Lease shall be grounds for termination of the Lease, in addition to any other remedies available to the State.

Where Tenant has any employees, a program of workers' compensation insurance, in an amount and form to meet all applicable requirements of the Labor Code of California, shall be in place throughout the term of this Lease. Such insurance shall include

employer's liability coverage of One Million Dollars (\$1,000,000.00) and shall specifically cover all persons providing services by or on behalf of Tenant and shall cover all risks to such persons under this Lease.

**7. INDEMNITY AND WAIVER. (For purposes of this Section 7, the term, "State", shall include the Department of Fish and Wildlife as well as the Fish and Game Commission.)** Tenant hereby waives all claims and recourse against the State, including the right to contribution for loss or damage to persons or property arising from, or in any way connected with or incident to this Lease, except claims arising from, and only to the extent of the gross negligence or willful misconduct of the State, its officers, agents or employees. Tenant shall notify the Department of Fish and Wildlife Aquaculture Coordinator immediately in case of any serious accident, injury, or casualty on, or potentially related to, the Lease area.

Tenant shall protect, indemnify, hold harmless, and defend the State, its officers, agents or employees, against any and all claims, demands, damages, costs, expenses or liability costs arising out of the use by Tenant, including its employees and agents, of the Lease area, except for liability arising out of, and to the extent of, the gross negligence or willful misconduct of the State, its officers, agents or employees for which the State is found liable by a court of competent jurisdiction.

Should the State be named as a defendant in any claim or legal action arising out of the use by Tenant, including its employees and agents, of the Lease area, upon tender of the claim or action by the State to Tenant, the Tenant shall assume the State's defense and represent the State in such legal action at Tenant's expense, subject to the provisions herein.

In lieu of tender to Tenant of the claim or action against the State, the State may elect to represent itself, in which event, the State shall bear its own litigation costs, expenses and attorney fees. Notwithstanding the foregoing, in the event the State is required to represent itself because of a conflict of interest by counsel representing Tenant, then Tenant, upon demand by the State, shall reimburse the State for the State's litigation costs, expenses and attorney fees. Costs shall include, without limitation, all attorney fees and costs, court costs, if any, costs of mediators or arbitrators, experts and consultants, and any other costs reasonably incurred in response to any claim.

In the event the State is found to be concurrently liable with Tenant by a court of competent jurisdiction for loss or damage to persons or property arising out of the use by Tenant, its employees and agents, of the Lease area, the State and Tenant shall cooperate and use their best efforts to seek and obtain an apportionment of liability from the court and neither party shall request a jury apportionment.

In the event the State is found to be liable for any other wrongful act, for which liability to another is determined by a court of competent jurisdiction for loss or damage to persons or property arising out of the use by Tenant, its employees and agents, of the Lease area, the State shall bear its own litigation costs, expenses and attorney fees. If Tenant has paid for any such costs which are the responsibility of the State under this provision, the State shall reimburse Tenant at Tenant's request. The State, in its sole discretion, may provide any reimbursement required in the form of a credit against any other money due the State under this Lease.

**8. RENEWAL.** Tenant may provide written notice to the Department of Fish and Wildlife Aquaculture Coordinator that it is exercising its right to seek renewal of this lease at least 120 days and not more than 364 days (one year) prior to the expiration date in Section 3 pursuant to Fish and Game Code section 15406. So long as Tenant, during the period specified herein, is still actively engaged in aquaculture, as determined by the State, Tenant shall have a prior right to renew for a period of 0.00 years on terms to be agreed upon between the State, in consultation with the Department of Fish and Wildlife Aquaculture Coordinator, and Tenant. If Tenant fails to give such notice of its right to seek renewal during the period specified herein, the Lease, including any remaining right to seek renewal, shall terminate upon expiration of the then-current term. Moreover, if Tenant is in default on the date of giving such notice, the notice shall be ineffective; if Tenant cures the default and provides a new notice thereafter all within the period specified herein for giving notice, that new notice shall be sufficient to exercise Tenant's prior right to renew. Provided, further, that if on the date a renewal term is to commence Tenant is in default, the renewal term shall not commence and this Lease shall expire at the end of the current term. However, if the State continues negotiating renewal terms after the prior term expires, then the holdover provisions of Section 9 may apply. In no event shall the term of this Lease, or the term of any renewal thereof, extend beyond 25 years each.

**9. HOLDOVER.** If the Term in Section 3 expires and the Lease has not been renewed pursuant to Section 8, and Tenant remains in possession of the Lease area with State's express or implied permission, Tenant shall become a tenant from month to month only, subject to all the provisions of this Lease except Sections 3, 4 and 5. During this holdover tenancy, a monthly rent representing one-twelfth of the current adjusted annual rent shall be payable on or before the first day of each month. It is expressly understood that a holdover tenancy does not create any right of renewal beyond that provided by Fish and Game Code section 15406 as set forth in Section 8, and that the only purpose of a holdover tenancy is to allow continuity of use of the property while the State continues to negotiate renewal terms or undertakes to issue a new lease to the highest responsible bidder pursuant to Fish and Game Code section 15406, or to allow the holdover tenant time to terminate and remove the aquaculture operation consistent with Fish and Game Code section 15409(a). If either party desires to terminate such holdover tenancy, it shall give the other party not less than thirty days advance written notice of the date of termination.

**10. POSSESSORY INTEREST.** Tenant understands and acknowledges that, pursuant to Revenue and Taxation Code section 107.6(a), any possessory interest created by this Lease may be subject to the payment of property taxes levied on that possessory interest.

Tenant agrees to pay, before delinquency, all lawful taxes, assessments, license fees and any other charges of any type whatsoever which at any time may be levied by the State, County, City or any tax or assessment-levying body upon any interest in or created by this Lease, or any possessory right which Tenant may have in or to the Lease area covered hereby.

**11. USE.** Tenant shall use the Lease area only for the purpose stated in this Lease, and such use shall be continuous from commencement of the Lease term until its expiration or termination. Pursuant to Fish and Game Code section 15414, the State may require the Tenant to submit any periodic reports it deems necessary for the proper

administration of State Water Bottom M-000-00.

The Lease area shall be continuously used by Tenant to conduct aquaculture operations, as aquaculture is defined in Fish and Game Code section 17. Tenant shall not use or permit the Lease area to be used in whole or in part during the term of this Lease for any purpose, other than as set forth herein, without the prior written consent of the State.

The possessory interest herein given to the Tenant does not exclude the general public from the Lease area, and Tenant may not unreasonably impede public access to state waters for purpose of fishing, navigation, commerce or recreation or other public trust values. However, Tenant may limit public access to the extent necessary to avoid damage to the Lease area and the aquatic life culture therein. This Lease is not intended to confer third party beneficiary status to anyone benefiting from the terms of this Lease. The possessory interest is further subject to all valid and existing contracts, leases, licenses, encumbrances, and claims of title which may affect the Lease area.

This Lease provides a tenancy of a temporary nature. The parties to this Lease agree that no Relocation Payment or Relocation Advisory Assistance will be sought or provided in any form as a consequence of this tenancy.

This Lease is of no force or effect until signed by both parties and all approvals are secured. Tenant may not commence performance until such approval has been obtained. Any commencement of performance prior to Lease approval shall be done at the Tenant's own risk. Nothing in this Lease may be waived, modified, amended or discharged except by a writing signed by the State and Tenant and approved by the State in a public meeting.

## **12. SHELLFISH PRODUCTION IMPROVEMENTS.**

[Oyster Cultivation.

[(A) Bottom culture: leases must be improved at an average rate of at least two cases of seed-bearing shell (160 pounds of seed-bearing shell) or 30 bushels of shellfish one or more years of age per acre over the allotted acreage per year. Improvements by unattached, single seed (less than one year old) shall consist of planting an average rate of 10,000 single seed per acre per year over the allotted acreage. Term of improvement shall be four years for seed-bearing shell and three years for oysters one or more years of age.

[(B) Off-bottom culture: leases must be improved at an average rate of at least one case of seed-bearing shell (80 pounds of seed-bearing shell), or 15 bushels of oysters one or more years of age per acre over the allotted acreage per year. Improvement by unattached single seed (less than one year old) shall consist of planting an average rate of 5,000 single seed per acre per year over the allotted acreage. Term of improvement shall be four years for seed-bearing shell and three years for oysters one or more years of age.

[(C) Production requirements: the annual harvest rate shall be an average of 2,000 oysters per acre (over one year of age) over the allotted acreage effective three years after the effective date of the lease. Harvest reports shall be recorded in the form of a receipt in quadruplicate furnished by the Department of Fish and Wildlife. The triplicate

copy shall be delivered to the Department of Fish and Wildlife on or before the first and sixteenth day of each month.

[(2) Miscellaneous Aquatic Species.

[(A) A lease for the cultivation of species other than oysters will include minimum planting and harvesting requirements for the species to be cultivated to insure that water bottoms so encumbered will be used for the purpose intended.

[(B) Harvest amounts shall be recorded in the form of a receipt in quadruplicate furnished by the Department of Fish and Wildlife. The triplicate copy shall be delivered to the Department of Fish and Wildlife on or before the first and sixteenth day of each month.]

**13. NO WARRANTY.** This Lease is made without warranty of title, condition or fitness of State Water Bottom M-000-00 for the Tenant's intended purpose or use.

Tenant agrees to accept the Lease area in its presently existing condition, "As Is", and that the State shall not be obligated to make any alterations, additions or betterments thereto except as otherwise provided in the Lease.

**14. COMPLIANCE.** As a necessary condition for this Lease, Tenant must obtain and maintain all necessary registrations, permits and any other entitlements. Tenant shall comply with all applicable federal, state and local laws, including laws relating to public health and safety, zoning, resource conservation and environmental protection including, but not limited to, the Coastal Zone Act, the Porter-Cologne Water Quality Act, and the California Environmental Quality Act.

Tenant shall comply with all applicable resource management and preservation mandates in the conduct of all activities that impact cultural, natural, or scenic resources. These mandates include, but are not limited to, those found in Public Resources Code sections 5024 and 5097 and the United States Secretary of the Interior's Guidelines for Historic Preservation. Tenant's operations under this Lease shall ensure that the State's goals of ensuring historical preservation and proper cultural, scenic and natural resource management are continually achieved in a manner consistent with applicable law.

**15. RECORD KEEPING.** The State may require periodic reports from Tenant as the State deems necessary for the proper administration of the State's water bottoms.

Tenant agrees that the Fish and Game Commission, Department of Fish and Wildlife, and the Bureau of State Audits, or their designated representative, shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Lease. Tenant agrees to maintain such records for possible audit for a minimum of three years after final payment. Tenant agrees to allow the auditor(s) prompt access to such records during normal business hours and similarly to allow interviews of any employees who might reasonably have information related to such records. Tenant agrees to include a similar right of the State to audit records and to interview staff in any sublease or contract related to performance of this Lease.

**16. WAIVER AND CONSENT.** Unless expressly acknowledged by the State in writing, no term, covenant, or condition of this Lease and no default or breach is waived by the acceptance of a late or nonconforming performance. The State's consent for one

transaction or event under this Lease is not consent to any subsequent occurrence of the same or any other transaction or event.

**17. BREACH.** The occurrence of any one of the following shall constitute a breach of this Lease by Tenant: (1) Failure of Tenant to make any annual Lease payment within ninety (90) days of the commencement date of the Lease or within ninety (90) days of any anniversary thereof; (2) Failure of Tenant to make any other payment more than thirty (30) days after such payment is due; (3) abandonment of the Lease area determined after the State has followed the procedures set forth in Civil Code section 1951.3; or (4) any failure by Tenant to comply with laws applicable to the conduct of aquaculture.

Should a threat to public health or safety or to the environment be created or exist on the Lease area, the State may declare an emergency event and, unless an alternative arrangement is preferable in the State's discretion, may enter upon and take possession of the Lease area to remedy the emergency without prior notice and/or demand an assignment of the right to operate the Lease area. Upon entering the Lease area under this Section, the State shall provide immediate notice of such action by hand delivery or fax of its declaration to Tenant. The State may retain possession of the Lease area until the emergency event has been completely and adequately addressed to the State's satisfaction. Where a breach of this Lease has caused or exacerbated the emergency event, or where the Tenant is non-cooperative in allowing or addressing any remedial action necessary because of the emergency event, the State may terminate the Lease. The State shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of the State's entry in the Lease area as provided herein, except damage resulting from the active negligence or willful misconduct of the State or its authorized representatives.

Any failure by Tenant to observe or perform another provision of this Lease where such failure continues for twenty (20) days after written notice thereof by the State to Tenant; any such notice shall be deemed to be the notice required under Code of Civil Procedure section 1161. However, if the nature of Tenant's breach is such that it cannot reasonably be cured within the twenty (20) day period, Tenant shall not be deemed to be in breach if Tenant shall commence such cure within the twenty (20) day period and thereafter diligently prosecutes such cure to completion.

Neither this Lease nor any interest of Tenant hereunder in the Lease area shall be subject to involuntary assignment or transfer by operation of law in any manner whatsoever, including, without limitation, the following: (a) transfer by testacy or intestacy; (b) assignments or arrangements for the benefit of creditors; (c) levy of a writ of attachment or execution on this Lease; (d) the appointment of a receiver with the authority to take possession of the Lease area in any proceeding or action in which the Tenant is a party; or (e) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or of a petition for reorganization or arrangement under any law relating to bankruptcy. Any such involuntary assignment or transfer by operation of law shall constitute a breach by Tenant and the State shall have the right to elect to take immediate possession of the Lease area, to terminate this Lease and/or invoke other appropriate remedies, in which case this Lease shall not be treated as an asset of Tenant.

Notices of breach shall specify the alleged breach and the applicable Lease provision

and shall demand that Tenant perform the provisions of this Lease within the applicable time period or quit the Lease area. No such notice shall be deemed a forfeiture or a termination of this Lease unless the State specifically so states in the notice.

**18. REMEDIES.** In the event of breach by Tenant, the State shall have the following remedies. These remedies are not exclusive; they are cumulative and are in addition to any other right or remedy of the State at law or in equity.

Collection of Rent: In any case where the State has a cause of action for damages, the State shall have the privilege of splitting the cause to permit the institution of a separate suit for rent due hereunder, and neither institution of any suit, nor the subsequent entry of judgment shall bar the State from bringing another suit for rent; it being the purpose of this provision to provide that the forbearance on the part of the State in any suit or entry of judgment for any part of the rent reserved under this Lease, to sue for, or to include in, any suit and judgment the rent then due, shall not serve as defense against, nor prejudice a subsequent action for, rent or other obligations due under the Lease. The claims for rent may be regarded by the State, if it so elects, as separate claims capable of being assigned separately.

Continued Performance: At the State's option, Tenant shall continue with its responsibilities under this Lease during any dispute.

Termination of Tenant's Right to Possession: Upon an event of breach of this Lease by Tenant, in addition to any other rights or remedies it may have, the State may give Tenant a three-day notice to cure the breach or quit the Lease area. If Tenant fails to do either, the State may bring a statutory proceeding in unlawful detainer to regain possession of the Lease area. Any notice give by the State pursuant to this Section does not constitute a termination of this Lease unless expressly so declared by the State in the notice. In the absence of written notice from the State, no act by the State, including, but not limited to, acts of maintenance, efforts to re-let and/or assign rights to possession of the Lease area, or the appointment of a receiver on the State's initiative to protect the State's interest under this Lease shall constitute an acceptance of Tenant's surrender of the Lease area, or constitute a termination of this Lease or of Tenant's right to possession of the Lease area. Upon such termination, the State has the right to recover from Tenant: (a) the worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease; (b) the worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of loss of rent that Tenant proves could have reasonably been avoided; (c) the worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of the award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and (d) any other amount necessary to compensate the State for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease, and costs of clearing the State's title of any interest of Tenant, commissions, attorneys' fees, and any other costs necessary or appropriate to make the Lease area operational by a new Tenant.

"The worth, at the time of the award," as used herein above shall be computed by allowing interest at the lesser of a rate of ten percent (10%) per annum or the maximum legal rate.

Receiver: If Tenant is in breach of this Lease, the State shall have the right to have a receiver appointed to collect rent and conduct Tenant's business or to avail itself of any other pre-judgment remedy. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by the State to terminate this Lease.

Right to Cure Tenant's Breach: At any time after Tenant commits a breach, the State can cure the breach at Tenant's cost. If the State, at any time by reason of Tenant's breach, pays any sum or does any act that requires the payment of any sum, the sum paid by the State shall be due immediately from Tenant to the State, and if paid at a later date shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by the State until the State is reimbursed by Tenant.

Personal Property of Tenant: In the event any personal property or trade fixtures of Tenant remain at the Lease area after the State has regained possession, that property or those fixtures shall be dealt with in accordance with the provisions for Surrender of the Lease area provided below.

State's Obligations After Breach: The State shall be under no obligation to observe or perform any covenant of this Lease on its part to be observed or performed that accrues after the date of any breach by Tenant. Such nonperformance by the State shall not constitute a termination of Tenant's right to possession nor a constructive eviction.

No Right of Redemption: Tenant hereby waives its rights under California Code of Civil Procedure sections 1174 and 1179 or any present or future law that allows Tenant any right of redemption or relief from forfeiture in the event the State takes possession of the Lease area by reason of any breach by Tenant.

Other Relief: The State shall have such rights and remedies for failure to pay any and all monetary obligations under this Lease as the State would have if Tenant failed to pay rent due. The remedies provided in this Lease are in addition to any other remedies available to the State at law, in equity, by statute, or otherwise.

Attorney's Fees and Costs: Tenant shall reimburse the State on demand for all reasonable attorney fees and expenses incurred by the State as a result of a breach under this Lease, provided that, in any litigation between the parties to this Lease concerning it, the prevailing party shall be entitled to recover court costs, reasonable attorney fees, and other costs reasonably incurred to secure the remedy obtained in the action.

The State shall not be in breach of the performance of any obligation required of it under this Lease unless and until it has failed to perform such obligation for more than thirty (30) days after written notice by Tenant to the State specifying the alleged breach and the applicable Lease provision giving rise to the obligation. However, if the nature of the State's obligation is such that more than thirty (30) days is required for its performance, then the State shall not be deemed in breach if it shall commence performance within such 30-day period and thereafter diligently prosecute the same to completion.

**19. ASSIGNMENT AND SUBLEASES.** Pursuant to Fish and Game Code section 15412, this Lease may not be assigned, in whole or in part, by Tenant, either voluntarily or by operation of law, and no subleases or other rights may be granted under it by Tenant without the prior written approval of the State, subject to the conditions that it

prescribes. At the election of the State, any attempted assignment or subletting without such prior approval of the State shall terminate this Lease.

**20. TERMINATION.** In the event the Lease area becomes unsuitable for the practical cultivation or harvest of shellfish, or in the event the Tenant becomes unable to continue operating the Lease for aquaculture for reasons beyond Tenant's ability to control, Tenant may terminate the Lease after thirty (30) days written notice to the State. Tenant may terminate the Lease for any other reason through a written request presented to and approved by the State at a public hearing held for purposes of consideration of Tenant's termination request. Such termination shall be effective thirty (30) days after State approval.

On expiration of or within thirty (30) days after earlier termination of the Lease, Tenant shall surrender the Lease area to the State. Tenant shall remove all of its personal property as well as all man-made material deposited during Tenant's occupancy within the above stated time unless otherwise agreed to in writing.

If Tenant fails to surrender the Lease area to the State on the expiration, or within thirty (30) days after earlier termination of the term as provided by this Section, Tenant shall hold the State harmless for all damages resulting from Tenant's failure to surrender the Lease area.

**21. QUITCLAIM.** Tenant shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute, acknowledge and deliver to the State in a recordable form provided by the State a release of all rights under this Lease. Should Tenant fail or refuse to deliver such a release, a written notice by the State reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Tenant of the expiration or termination of this Lease.

**22. TIME OF THE ESSENCE.** Time is of the essence of this Lease and any term, covenant or condition in which performance is a factor.

**23. CHANGES.** Nothing in this Lease may be waived, modified, amended, or discharged except by an instrument in writing signed by Tenant and the State, in consultation with the Department of Fish and Wildlife Aquaculture Coordinator. At its discretion, the Department of Fish and Wildlife may charge Tenant for any and all costs it incurs in any lease amendment requested by Tenant.

**24. SEVERABILITY.** If a court of competent jurisdiction determines that a Lease provision is legally invalid, illegal or unenforceable, and such decision becomes final, the provision shall be severed and deleted from the Lease and the remainder reasonably interpreted to achieve its intent. Tenant and the State agree to replace such void or unenforceable provision with a valid and enforceable provision that will achieve, to the extent possible, the purpose of the original provision.

**25. SITE CLEANUP.** Tenant shall provide to the State financial assurance sufficient to ensure that, upon termination or abandonment of this Lease, the Lease area is surrendered in a condition that is in accordance with Section 20, to the satisfaction of the State.

The financial assurance amount shall be calculated based on an analysis of the physical activities and materials necessary to surrender the site in the required condition; the unit

costs or costs for third party contracting, for each of the identified activities as applicable; the number of units of these activities; and a contingency amount not to exceed ten percent (10%) of the costs of the activities.

Financial assurances may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the State which it reasonably determines to be adequate to perform restoration of the site. Personal surety bonds cannot provide financial assurance under this requirement. The financial assurance shall be payable to the State and shall remain in effect throughout the duration of the tenancy under the Lease, and until the State accepts surrender of the Lease area or until replaced by an equivalent financial assurance.

The financial assurance shall be applied by the State to place the Lease area in the condition required for surrender under Section 20, whenever the Tenant fails or refuses to accomplish such activities, and to reimburse the State for all its costs of achieving that condition of the Lease area. Any assets remaining from the financial assurance after all costs to the State, including administrative costs to secure the funds, have been reimbursed therefrom, shall be returned to the Tenant.

**26. NON-DISCRIMINATION.** In its use of the Lease area, Tenant shall not discriminate against, harass, or allow harassment against any person or class of persons on the basis of race, color, creed, religion, national origin, ancestry, sex, sexual orientation, age, marital status, medical condition or disability. Tenant shall ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment.

Tenant 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 Code of Regulations, Title 2, section 7285.0 et seq.). Tenant shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Tenant shall include the non-discrimination and compliance provisions of this clause in all contracts to perform work under and/or in connection with this Lease.

Tenant shall be solely responsible for complying with the requirements of the Americans With Disabilities Act of 1990 (P.L. 101-336, commencing at section 12101 of Title 42, United States Code and including Titles I, II and III), the Rehabilitation Act of 1973, and all related regulations, guidelines and amendments to both laws.

**27. DRUG-FREE WORKPLACE.** Tenant will comply with the requirements of the Drug-Free Workplace Act of 1990, as amended, and will provide a drug-free workplace by taking the following actions:

(a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

(b) Establish a Drug-Free Awareness Program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Tenant's policy of maintaining a drug-free workplace; (3) any available counseling, rehabilitation and employee assistance programs; and, (4) penalties that may be imposed upon employees for drug abuse

violations.

(c) Provide that every employee who works on the Lease area will: (1) receive a copy of the Tenant's drug-free policy statement; and, (2) agree to abide by the terms of the Tenant's statement as a condition of employment on the Lease area.

Failure to comply with these requirements may result in suspension or termination of this Lease, and Tenant may be ineligible for award of any future State Water Bottom Leases if the State determines that any of the following has occurred: (1) the Tenant has made false certification, or (2) violated the certification by failing to carry out the requirements as noted above.

**28. ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties, and an agreement hereafter shall be ineffective to change, modify or discharge it in whole or in part, unless such agreement is in writing and contains the authorized signature of the party against whom enforcement of the change, modification or discharge is sought.

**29. CONSTRUCTION.** This Lease shall be governed by and construed in accordance with the laws of the State of California. The Section titles in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Lease or in any way affect this Lease.

Tenant shall maintain annual registration of its aquaculture facility in accordance with Fish and Game Code sections 15101 and 15103 and shall keep current with all fees and surcharges, including any penalties for late payment of same, required by those statutes.

**30. INCORPORATION BY REFERENCE.** The provisions of Chapters 1 through 8 of Division 12 of the Fish and Game Code (commencing with section 15000) and the provisions of Chapter 9 of Division 1 of Title 14, California Code of Regulations (commencing with section 235), as may be amended from time to time, are made part of this Lease by this reference. If there is a conflict between any term or condition of this Lease and any of the provisions incorporated by reference in it, the incorporated provisions shall control.

**31. CONFLICTS OF INTEREST.** Tenant warrants that no official, employee in the state civil service or other appointed state official, or any person associated with same by blood, adoption, marriage, cohabitation, and/or business relationship: (a) has been employed or retained to solicit or aid in the procuring of this Lease; or (b) will be employed in the performance of this Lease without the immediate divulgence of such fact to the State. In the event the State determines that the employment of any such official, employee, associated person, or business entity is not compatible, Tenant shall terminate such employment immediately. For breaches or violations of this Section, the State shall have the right to annul this Lease without liability.

**32. EXPATRIATE CORPORATION.** Tenant hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation, within the meaning of Public Contract Code sections 10286 and 10286.1 and is eligible to contract with the State.

**33. NO AGENCY.** The Tenant, and the agents and employees of the Tenant in the

performance of the Lease, shall act in an independent capacity and not as officers or agents of the State of California.

**34. CLOSURE.** Neither the State nor the Department of Fish and Wildlife shall have any liability arising from a closure of waters by the Department of Fish and Wildlife Director pursuant to Fish and Game Code section 5654, where aquaculture operations are taking place.

**35. NOTICES.** Notices to the parties to this Lease shall be made in writing and may be given by delivery in person, by U.S. Mail with postage prepaid, or by receipt-confirmed facsimile to:

FISH AND GAME COMMISSION Executive Director 1416 Ninth Street, 13 <sup>TH</sup> Floor Sacramento, CA 95814 Telephone: (916) 653-4899 Facsimile: (916) 653-5040	[BUSINESS NAME] [PERSON/TITLE] [ADDRESS] [CITY/STATE/ZIP] Telephone: (000) 000-0000 Facsimile: (000) 000-0000
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Notices shall be deemed given upon delivery to the addressee. Any notice given by facsimile shall also be given to the addressee by U.S. Mail, with postage prepaid. If a notice given by facsimile is delivered to the addressee after 5:00 p.m. Pacific time, or on a Saturday, Sunday or State of California or national holiday, the notice shall be deemed given on the next business day. Either party may change its address for notice purposes by giving written notice to the other party in the manner provided in this Section.

**36. SPECIAL CONDITIONS.** [THIS SPACE RESERVED FOR ANY SITE- SPECIFIC PROVISIONS OR EXCEPTIONS/MODIFICATIONS TO THE PRECEDING SECTIONS.]

**SIGNATURE PAGE**

This Lease and any amendment(s) may be executed in counterparts, each of which, when executed and delivered by the State and Tenant, shall be an original and together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

Each signatory attests he or she is duly authorized to execute this Lease on behalf of the principal he or she represents.

Where Tenant is a corporation, the signature of the Tenant on this Lease will be verifying that Tenant is currently qualified to do business in the State of California, as defined in Revenue and Taxation Code section 23101, in order to ensure that all obligations to the State are fulfilled. Both domestic and foreign corporations (those incorporated outside the State of California) must be in good standing in order to be qualified to do business in California.

STATE OF CALIFORNIA

TENANT

Fish and Game Commission

[Business Name]

By: \_\_\_\_\_  
[Name], Executive Director

By: \_\_\_\_\_  
[Name], [Title]

Date:

Date:

**EXHIBIT A**

Official Map and Description of State Water Bottom M-000-00

M-430-13\_Original\_Lease\_03-01-91\_signed.pdf

M-430-13\_Amendment\_1\_03-01-91\_signed.pdf

M-430-13\_Amendment\_2\_01-01-93\_signed.pdf

M-430-13\_Amendment\_3\_04-01-96.pdf

**LEASE OF STATE WATER BOTTOMS FOR AQUACULTURE, LEASE NO. M-430-13**

This aquaculture lease made and entered into as of this 1st day of March, 1991, by and 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".

**WITNESSETH:**

**WHEREAS**, Lessee is presently the holder of a valid license to cultivate marine life for profit in the waters of the State of California as provided in Fish and Game Code Section 15101, and

**WHEREAS**, Lessee has heretofore filed with Lessor a bid application for the exclusive privilege of cultivating oysters, mussels and clams in the hereinafter described waters of the State of California, and has accompanied said application with the required filing fee of one hundred dollars (\$100.00), and

**WHEREAS**, Lessor has heretofore published notice of the hearing of said application, has been advised by the State Lands Commission of the State of California that the area applied for is available for leasing, and it has been determined by the Fish and Game Commission that it is in the best interest of the State of California that such lease be made, and

**NOW, THEREFORE, THIS INDENTURE WITNESSETH:**

That, in consideration of the payment of the monies hereinafter stated in accordance with the bid made by Lessee and accepted at a duly called and noticed hearing of the Fish and Game Commission of the State of California, pursuant to law and in consideration of the covenants contained herein on the part of the Lessee, the Lessor does hereby lease the California state water bottom hereinafter described and does hereby grant to Lessee the exclusive privilege to cultivate oysters, mussels and clams thereon, and in those certain waters of the State of California described as follows, to wit:

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

In Tomales Bay, Marin County, State of California, starting from Bench Mark 42, located at approximately 38°7'47" North latitude, 122°51'45" West longitude, on the Point Reyes Northeast quadrangle, Marin County, California, U.S. Dept. of the Interior Geological Survey 7.4 minute series topographic map; thence South 36° East 1000 feet to the true point of beginning; thence South 74°40' West 1141 feet; thence North 9°30' West 1452 feet; thence North 75° East 470 feet; thence South 35°45' East 350 feet; thence South 53°45' East 1150 feet; thence South 28° East 750 feet to the true point of beginning.

This area of water bottom, containing an area of 50.0+ acres more or less, comprises Aquaculture Lease No. M-430-13 (Appendix 1).

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.

All shellfish cultivation methods on the lease shall be confined to long lines, rafts, stakes, racks and bags, rack and tray, floats, and on the bottom 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.

Notice of intent to plant shellfish on the lease shall be given to the Department of Fish and Game, Marine Resources Division, 411 Burgess Drive, Menlo Park, CA 94025. In addition to the required ten (10) day notice, at least a 24-hour notice shall be given to the Marine Unit Manager, Mr. Paul Reilly, telephone (415) 688-6362, giving details on where the shellfish seed can be inspected.

This lease is for a term of twenty-five (25) years commencing on the 1st day of March, 1991, and ending on February 29, 2016, for a total rental of two thousand two hundred and fifty dollars (\$2,250.00) per year, and a privilege tax on all products harvested as provided by Fish and Game Code Section 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 2). This annual rate of planting for shellfish shall be:

Off-bottom culture: 250,000 single seed less than 1 year old (@ 5,000/acre) or 50 cases (@ 80 lbs shellstock/case) of seed-bearing shell.

The term of improvement for this lease shall be three 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 2,000 oysters, clams or other shellfish per acre, effective July 1, 1994.

A minimum rate of planting shall be negotiated for option periods. 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 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 (Appendix 3). 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 Secretary 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 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.

In order to assure compliance with the escrow provisions of this lease, Lessee shall place in the agreed upon escrow account specified in the "Escrow Agreement For Cleanup of Aquaculture Leases, Tomales Bay, California (Addendum 1)", hereby attached to and made part of this agreement, a total of three hundred sixty-three dollars (\$363.00), a sum (rounded to the nearest dollar amount) proportional to Lessee's total lease acreage of fifty (50.0) acres, which bears to the total acreage of 688.9 acres of State water bottoms leased in Tomales Bay for aquaculture purposes. As certification that the first half of the specified deposit has been made, a total of one hundred eighty-one dollars and fifty cents (\$181.50), must be

received by Lessor prior to final approval of this lease agreement. Proof that the second half of the required security deposit (\$181.50) has been made must be furnished to Lessor on or before February 29, 1992, or this lease shall be subject to termination.

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, State Coastal Commission, State Lands Commission, 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 his 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, 411 Burgess Drive, Menlo Park, CA 94025, 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 as described in Lessee's lease bid.

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 Section 62.33 and 66.01-10). Lessee shall make application to 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-430-13.

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 Secretary 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 State 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  
Shellfish Unlimited  
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 anyway 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

By: Robert R Treanor

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME

By: Karyn A. Meyreles  
Lessor

SHELLFISH UNLIMITED

By: Lisa Jang  
Lessee

By: Martin J. ...

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

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.



AMENDMENT NO. 1  
TO LEASE OF STATE WATER BOTTOMS FOR AQUACULTURE LEASE NO. M-430-13

This amendment of aquaculture lease made and entered into as of the 1st day of March, 1991, by and 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".

W I T N E S S E T H:

**WHEREAS**, the parties hereto did on March 1, 1991, enter into Lease Agreement No. M-430-13, for the purpose of cultivating oysters, mussels and clams, and

**WHEREAS**, Lessor has determined after a boundary survey that the location of the lease as shown on the lease description is in error, and

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

**NOW, THEREFORE, THIS AMENDMENT WITNESSETH:**

That, in accordance with a request for a redescription 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 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 42" located at 38° 7' 44.5" North latitude, 122° 51' 46.2" West longitude on the Point Reyes Northeast Quadrangle, California, Marin County, 7.5 minute series (topographic), United States Dept. of the Interior, Geological Survey, then, S16° 46' 43"W, 929.49 feet to the beginning point. Then, S70° 18' 02"W, 1,645.02 feet; then N9° W, 1,801.99 feet; then, N40° 50' 34"E, 530.03 feet; then, S35° 45'E, 350 feet; then, S53° 45'E, 1,150 feet; then S28° E, 750 feet to the point of beginning.

This parcel of water bottoms, containing an area of 50+ acres more or less, comprises Aquaculture Lease No. M-430-13.

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 Robert R Treanor

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME

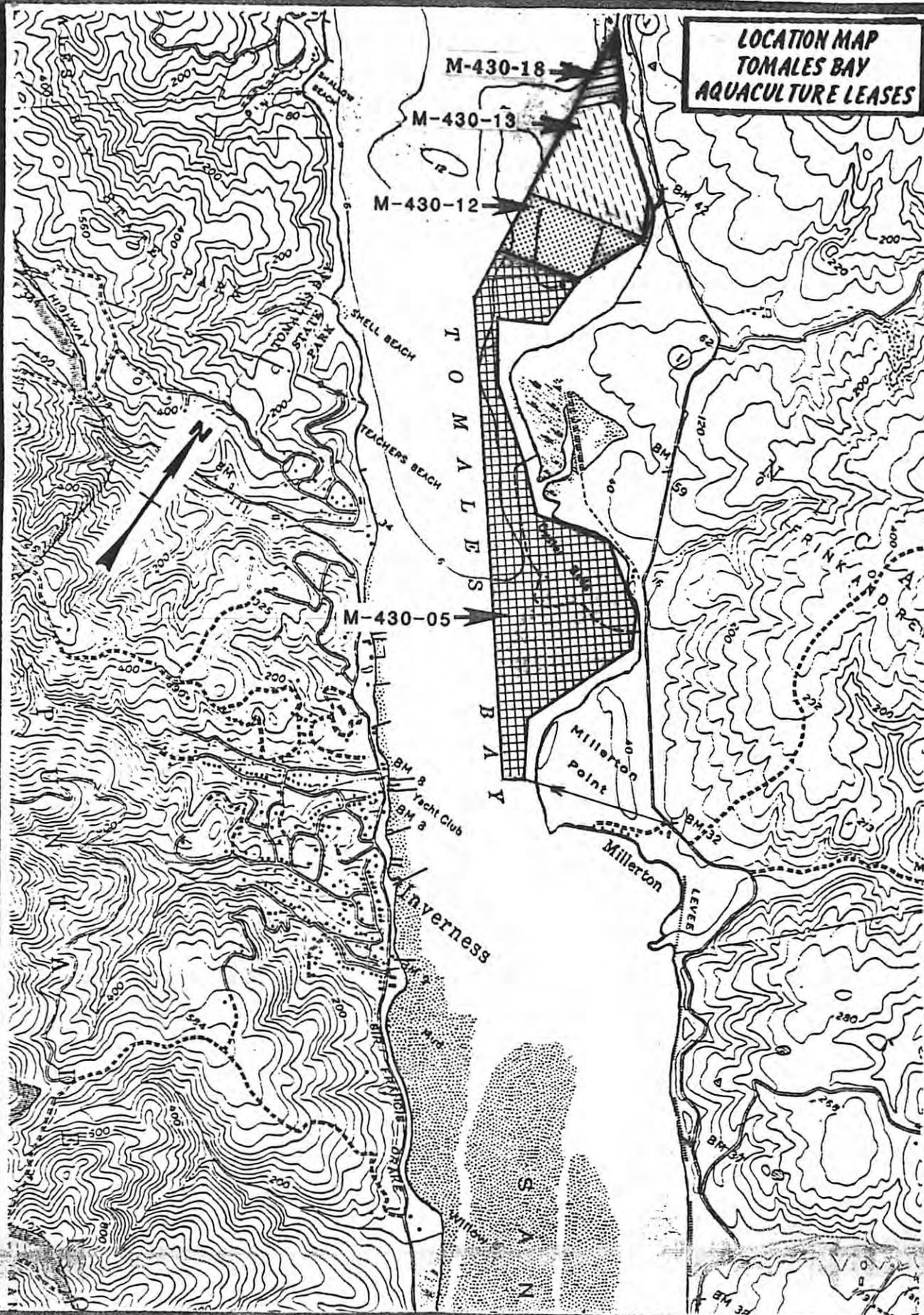
By Karyn A. Meyers  
Lessor

SHELLFISH UNLIMITED

By Lin Jang  
Lessee

By Martina Stevens

**LOCATION MAP  
TOMALES BAY  
AQUACULTURE LEASES**



**AMENDMENT NO. 2  
TO LEASE OF STATE WATER BOTTOMS FOR AQUACULTURE  
LEASE NO. M-430-13**

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 Point Reyes Oyster Company, 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-430-13 with Shellfish Unlimited (a partnership comprised of Point Reyes Oyster Company and Bay Bottom Beds Company) 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 (50 acres) be divided equally between the two partners in two 25-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 42" located at 38°7'44.5 North Latitude, 122°51'46.2" West Longitude on the Point Reyes Northeast Quadrangle, California, Marin County, 7.5 minute series (topographic), United States Dept. of the Interior, Geological Survey; thence S 16°46'43" W 929.49 feet to the true point of beginning; thence S 70°18'02" W 1,645.02 feet; thence N 9°00'00" W 901.00 feet; thence N 84°19'55" E 1,442.65 feet; thence S 28°00'00" E 541.23 feet to the true point of beginning.

This parcel of water bottoms, containing an area of 25± acres, more or less, comprises Aquaculture Lease No. M-430-13. (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 one thousand one hundred and twenty-five dollars (\$1,125.00) 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 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: 125,000 single seed less than 1 year old  
(@ 5,000/acre) or 25 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 50,000 (@ 2,000/acre) oysters, clams or other shellfish, effective July 1, 1994.

A minimum rate of planting shall be negotiated for option periods. 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 7<sup>th</sup>, 1989 (Appendix 3<sup>rd</sup>). 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. This 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 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 Cleanup of Aquaculture Leases, Tomales Bay, California (Addendum 1)", hereby attached to and made part of this agreement, a total of one hundred eighty-one dollars (\$181.50), a sum proportional to Lessee's total lease area of twenty-five (25) acres. This amount equals one-half of the amount, three hundred sixty-three dollars (\$363.00), 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, State Coastal Commission, State Lands Commission, 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, tht 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 Section 62.33 and 66.01-10). Lessee shall make application to 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-430-13.

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

MARTIN STRAIN  
Point Reyes Oyster Co.  
P. O. Box 16  
Tomales, CA 94971

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

By: Robert R. Treanor

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME

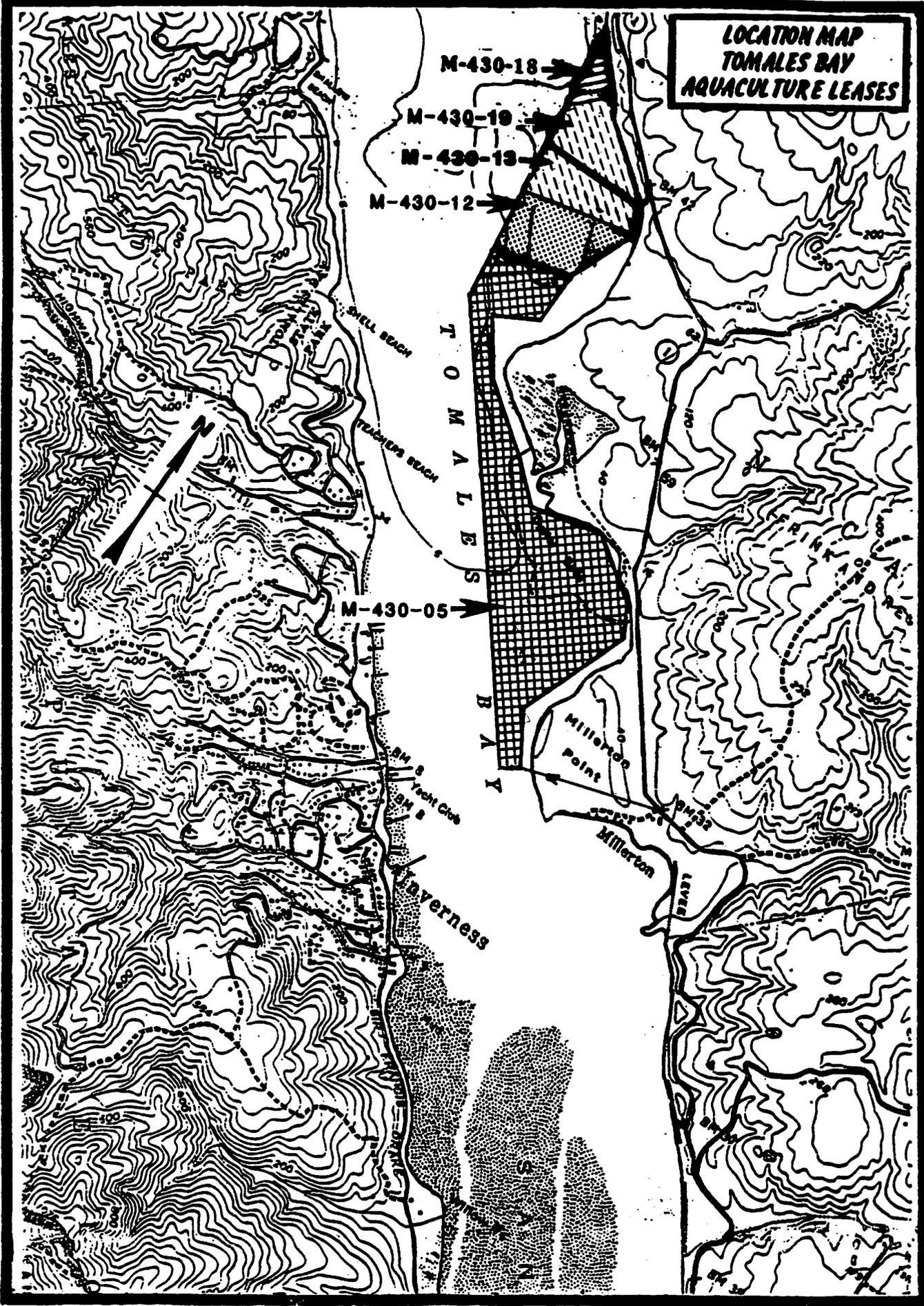
By: *David L. ...*  
Lessor

PT. REYES OYSTER CO.

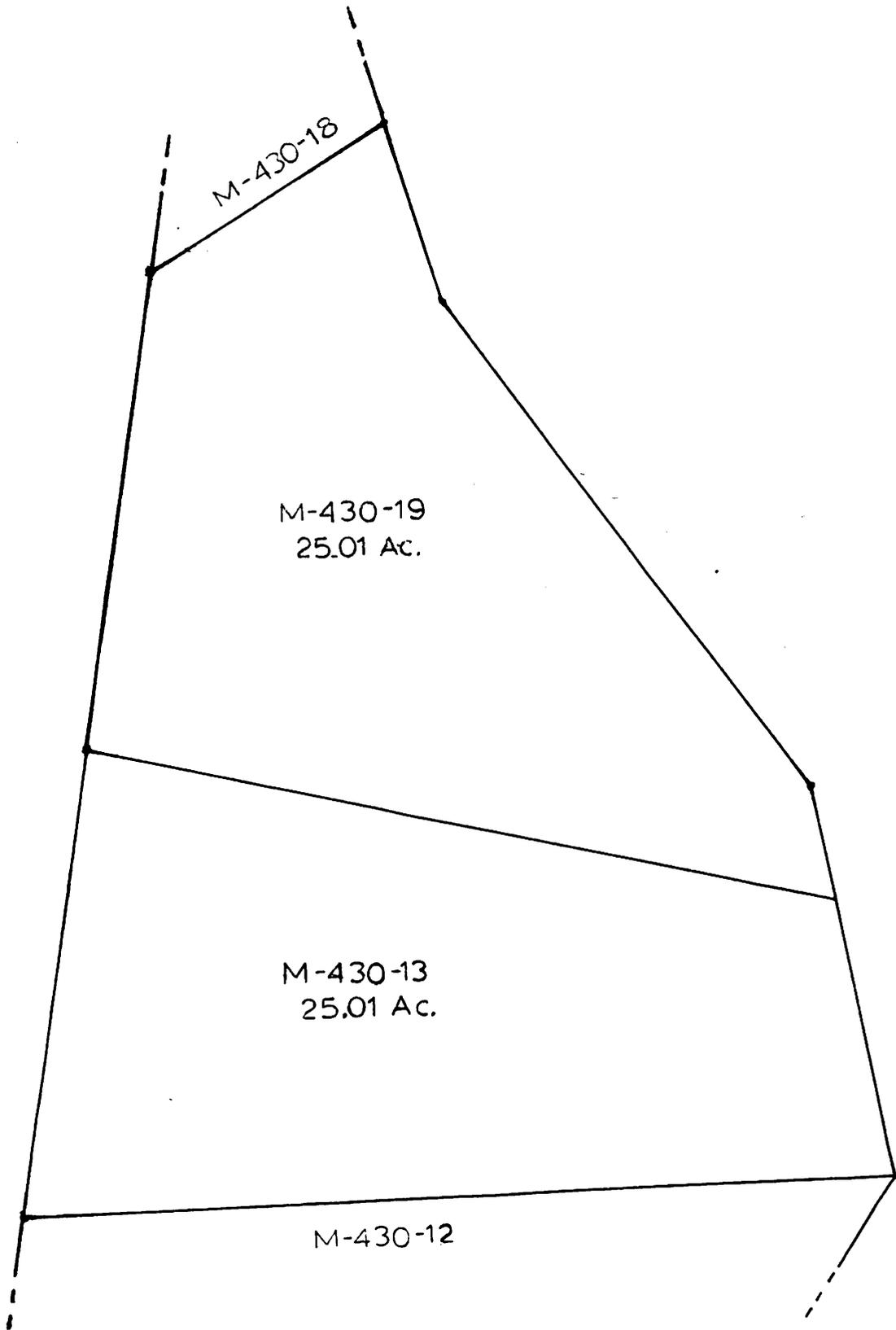
By: *Martin ...*  
Lessee

By: \_\_\_\_\_

**LOCATION MAP  
TOMALES BAY  
AQUACULTURE LEASES**



PARTITION OF AQUACULTURE LEASE M-430-13



ADDENDUM TO  
AQUACULTURE LEASE  
BETWEEN  
DEPARTMENT OF FISH AND GAME, LESSOR  
AND  
POINT REYES OYSTER CO.

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.

ADDENDUM TO  
AQUACULTURE LEASE  
BETWEEN  
DEPARTMENT OF FISH AND GAME, LESSOR  
AND  
~~SHELLFISH UNLIMITED~~ *Point Reyes Oyster 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 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~~, *Point Reyes*, hereinafter referred to as "Lessee", and Tomales Bay Shellfish Growers Association, a California Nonprofit Corporation now forming, hereinafter referred to as the *Oyster Co.* "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-430-13.

This Escrow Agreement is subject to Lease No. M-430-13 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 ~~\$363.00~~, which funds will consist of the following:  
*\$90.75* *\$181.50*
  - (a) ~~\$181.50~~ deposited upon entering upon the lease;
  - (b) ~~\$181.50~~ deposited upon the first anniversary of such inception date.

*\$90.75*  
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:

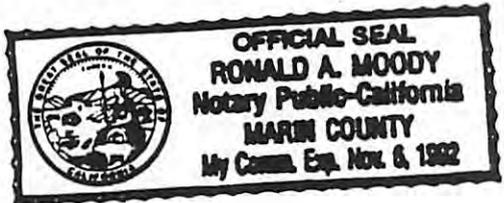
F. ROBERT STUDDERT  
36 Professional Center Parkway  
San Rafael, CA 94903

INDIVIDUAL ACKNOWLEDGMENT

State of Calif.  
County of Sonoma } SS.

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

Ronald A. Moody  
the undersigned Notary Public, personally appeared  
Martin Spain



personally known to me  
 proved to me on the basis of satisfactory evidence  
to be the person(s) whose name(s) is 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 Adv. to state water lease  
Number of Pages \_\_\_\_\_ Date of Document \_\_\_\_\_  
Signer(s) Other Than Named Above \_\_\_\_\_

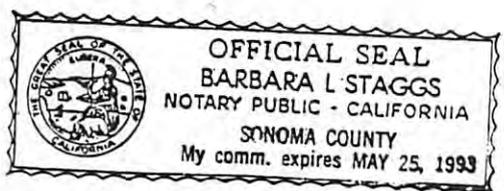
7100-010

NATIONAL NOTARY ASSOCIATION • 8236 Remmet Ave. • P.O. Box 7184 • Canoga Park, CA 91304-7

State of CALIFORNIA  
County of SONOMA } SS.

On this the 1st day of February 1991, before me,

BARBARA L. STAGGS  
the undersigned Notary Public, personally appeared  
Lisa Jang



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

Barbara L. Staggs  
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 Bottoms  
Number of Pages 13 Date of Document signed 2/1/91  
Signer(s) Other Than Named Above none at this time

To the Lessee:

**PT. REYES OYSTER COMPANY**  
**P. O. Box 16**  
**Tomales, CA 94971**

~~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: Karejo A. Merzela  
Acting Asst. Director, Admin.

ASSOCIATION: Lisa Jang  
President July 3, 1991

LESSEE: ~~Lisa Jang~~  
Matthew [Signature]

**AMENDMENT NO. 3  
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 Point Reyes Oyster Company, Inc., hereinafter referred to as "Lessee".

**WITNESSETH:**

**WHEREAS**, on March 1, 1991, Lessor did enter into Lease Agreement No. M-430-13 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 (50± acres) be divided equally between the two partners in two, (2) 25-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 50-acre lease into two parcels of reduced size (said lease M-430-13, 25 acres and lease M-430-19, 25 acres), 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 one thousand one hundred and twenty-five dollars (\$1,125.00) 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



**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: \_\_\_\_\_

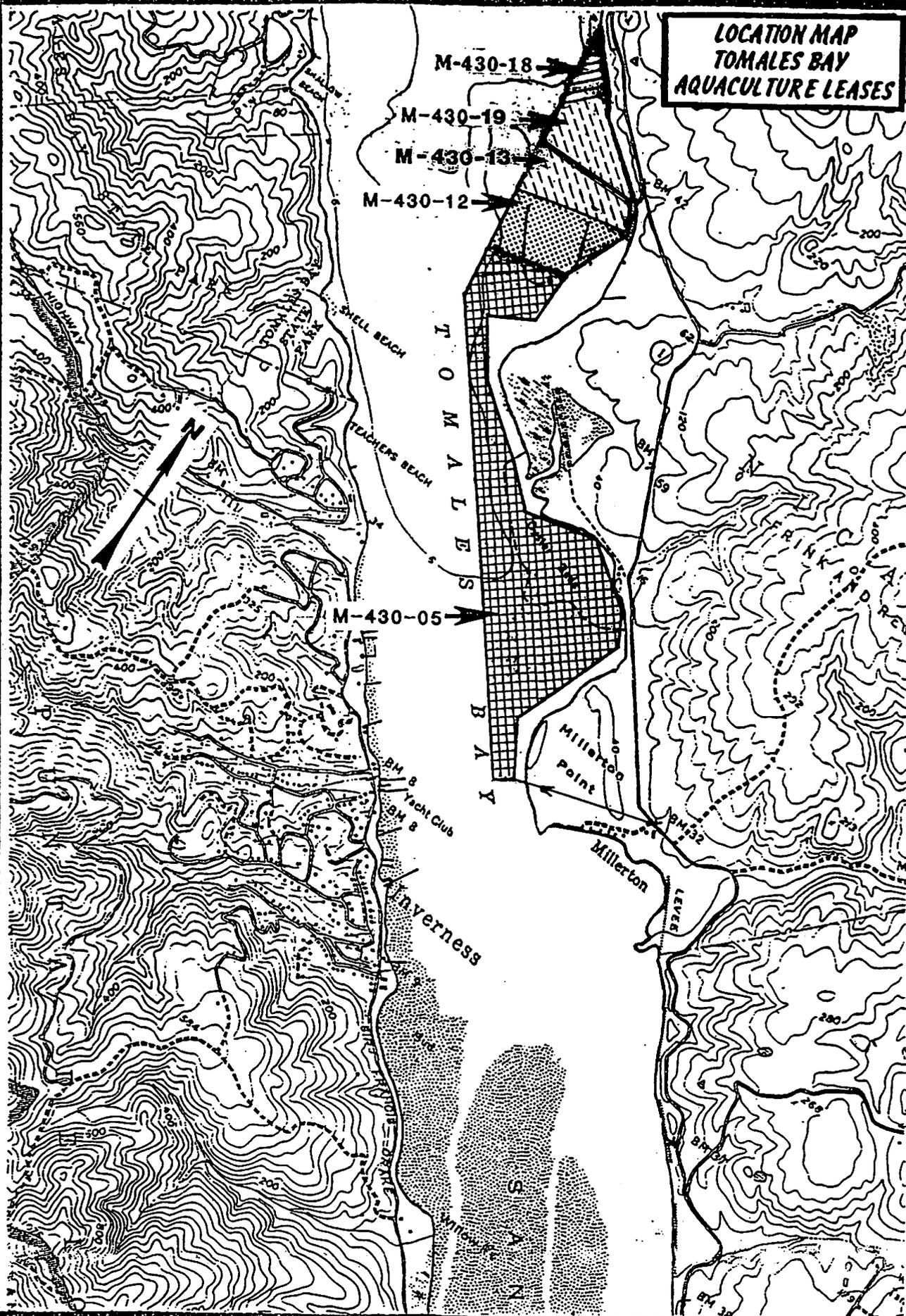
By: \_\_\_\_\_

POINT REYES OYSTER COMPANY, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

**LOCATION MAP  
TOMALES BAY  
AQUACULTURE LEASES**



ADDENDUM TO  
AQUACULTURE LEASE  
BETWEEN  
DEPARTMENT OF FISH AND GAME, LESSOR  
AND  
POINT REYES OYSTER 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 Point Reyes Oyster Company, Inc. 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-430-13.

This Escrow Agreement is subject to Lease No. M-430-13 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 \$181.00, which funds will consist of the following:

- (a) \$90.50 deposited upon entering upon the lease;
- (b) \$90.50 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:	MARTIN STRAIN POINT REYES OYSTER COMPANY, INC. P. O. Box 16 Tomales, California 94971

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: \_\_\_\_\_

\_\_\_\_\_

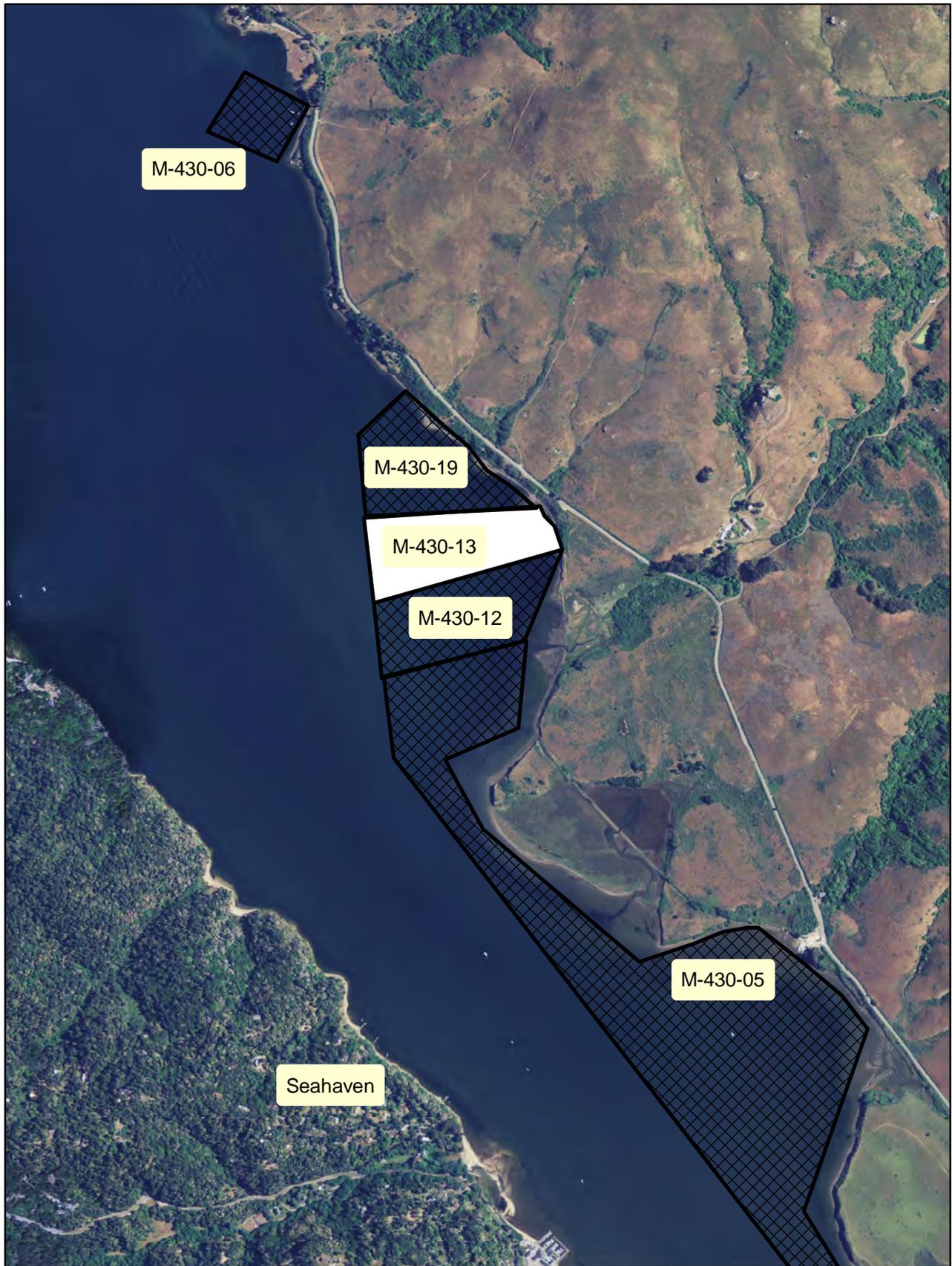
ASSOCIATION: \_\_\_\_\_

\_\_\_\_\_

LESSEE: \_\_\_\_\_

\_\_\_\_\_

# State Water Bottom Lease M-430-13 Tomales Bay, Marin County, CA



Map prepared by  
CA Dept. Fish and Game  
30 January 2012

M-430-17\_Original\_Lease\_03-01-91\_signed.pdf

M-430-17\_Amendment\_1\_03-01-91\_signed.pdf

M-430-17\_Amendment\_2\_01-01-93\_signed.pdf

M-430-17\_Amendment\_3\_04-01-96.pdf

M-430-17\_Amendment\_4\_06-15-00\_signed.pdf

LEASE OF STATE WATER BOTTOMS FOR AQUACULTURE, LEASE NO. M-430-17

This aquaculture lease made and entered into as of this 1st day of March, 1991, by and 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".

WITNESSETH:

WHEREAS, Lessee is presently the holder of a valid license to cultivate marine life for profit in the waters of the State of California as provided in Fish and Game Code Section 15101, and

WHEREAS, Lessee has heretofore filed with Lessor a bid application for the exclusive privilege of cultivating oysters, mussels and clams in the hereinafter described waters of the State of California, and has accompanied said application with the required filing fee of one hundred dollars (\$100.00), and

WHEREAS, Lessor has heretofore published notice of the hearing of said application, has been advised by the State Lands Commission of the State of California that the area applied for is available for leasing, and it has been determined by the Fish and Game Commission that it is in the best interest of the State of California that such lease be made, and

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That, in consideration of the payment of the monies hereinafter stated in accordance with the bid made by Lessee and accepted at a duly called and noticed hearing of the Fish and Game Commission of the State of California, pursuant to law and in consideration of the covenants contained herein on the part of the Lessee, the Lessor does hereby lease the California state water bottom hereinafter described and does hereby grant to Lessee the exclusive privilege to cultivate oysters, mussels and clams thereon, and in those certain waters of the State of California described as follows, to wit:

All that certain real property situated in the County of Marin, State of California as 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, and 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 northwest tip of Preston Point, the true point of beginning; thence South 5°35'32" West 2,297.54 feet; thence North 50°27'48" West 2,230.2 feet along the northern boundary of Aquaculture Lease Nos. 430-10, 430-11, and 430-2; thence South 39°32'12" West 163.83 feet; thence South 64°32'36" West, 1190.76 feet; thence North 46°14'11" West, 855.30 feet; thence North

58°38'08" East, 3627.23 feet; thence South 6°56'04" East 648.54 feet; thence South 59°41'20" East 655.05 feet to the true point of beginning.

This area of water bottom, containing an area of 123.8+ acres more or less, comprises Aquaculture Lease No. M-430-17 (Appendix 1).

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.

All shellfish cultivation methods on the lease shall be confined to long lines, rafts, stakes, racks and bags, rack and tray, floats, and on the bottom 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.

Notice of intent to plant shellfish on the lease shall be given to the Department of Fish and Game, Marine Resources Division, 411 Burgess Drive, Menlo Park, CA 94025. In addition to the required ten (10) day notice, at least a 24-hour notice shall be given to the Marine Unit Manager, Mr. Paul Reilly, telephone (415) 688-6362, giving details on where the shellfish seed can be inspected.

This lease is for a term of twenty-five (25) years commencing on the 1st day of March, 1991, and ending on February 29, 2016, for a total rental of four thousand three hundred and thirty-three dollars (\$4,333.00) per year, and a privilege tax on all products harvested as provided by Fish and Game Code Section 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 2). This annual rate of planting for shellfish shall be:

Off-bottom culture: 619,000 single seed less than 1 year old (@ 5,000/acre) or 124 cases (@ 80 lbs shellstock/case) of seed-bearing shell.

The term of improvement for this lease shall be three 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 2,000 oysters, clams or other shellfish per acre, effective July 1, 1994.

A minimum rate of planting shall be negotiated for option periods. 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 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.) Appendix 3). 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 Secretary 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 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.

In order to assure compliance with the escrow provisions of this lease, Lessee shall place in the agreed upon escrow account specified in the "Escrow Agreement For Cleanup of Aquaculture Leases, Tomales Bay, California (Addendum 1)", hereby

attached to and made part of this agreement, a total of eight hundred ninety-nine dollars (\$899.00), a sum (rounded to the nearest dollar amount) proportional to Lessee's total lease acreage of one hundred twenty-three and eight-tenths (123.8) acres, which bears to the total acreage of 688.9 acres of State water bottoms leased in Tomales Bay for aquaculture purposes. As certification that the first half of the specified deposit has been made, a total of four hundred forty-nine dollars and fifty cents (\$449.50), must be received by Lessor prior to final approval of this lease agreement. Proof that the second half of the required security deposit (\$449.50) has been made must be furnished to Lessor on or before February 29, 1992, or this lease shall be subject to termination.

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, State Coastal Commission, State Lands Commission, 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 his 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, 411 Burgess Drive, Menlo Park, CA 94025, 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 and clams as described in Lessee's lease bid.

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 Section 62.33 and 66.01-10). Lessee shall make application to 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-430-17.

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 Secretary 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 State 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  
Shellfish Unlimited  
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 anyway 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

By: Robert R Treanor

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME

By: Karen A. Meyers  
Lessor

SHELLFISH UNLIMITED

By: Lisa Jang  
Lessee

By: Mark [Signature]

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

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.

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;

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. Meyers  
Acting Asst. Director, Admin.

ASSOCIATION: \_\_\_\_\_

LESSEE: Lisa Jang  
Martin J. Jarama

AMENDMENT NO. 1  
TO LEASE OF STATE WATER BOTTOMS  
FOR AQUACULTURE LEASE NO. M-430-17

This amendment of aquaculture lease made and entered into as of the 1st day of March, 1991, by and 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".

W I T N E S S E T H:

WHEREAS, the parties hereto did on March 1, 1991, enter into Lease Agreement No. M-430-17, for the purpose of cultivating oysters, mussels and clams, and

WHEREAS, Lessee has applied to Lessor to amend the beginning date of said lease from March 1, 1990 to March 1, 1991, because the initial lease agreement was not consummated until that latter date.

NOW, THEREFORE, it is mutually agreed by and between the parties hereto that the Twenty-Five (25) year term of this lease is hereby amended to commence on the 1st day of March 1991, and end on February 28, 2016.

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

IN WITNESS WHEREOF, the parties have caused this Amendment to Indenture of Lease to be executed as of the day and year first above written.

APPROVED:  
STATE OF CALIFORNIA  
FISH AND GAME COMMISSION

By: Robert R. Treanor

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME

By: Karyn A. Meyers

SHELLFISH UNLIMITED

By: Lisa Jang

By: Matthew Stewart

**AMENDMENT NO. 2  
TO LEASE OF STATE WATER BOTTOMS FOR AQUACULTURE  
LEASE NO. M-430-17**

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 Point Reyes Oyster Company, 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 Company) 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 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; thence South 50°27'48" East 807.00 feet to the true point of beginning; thence South 50°27'48" East 1,423.20 feet; thence South 39°32'12" West 351.00 feet; thence S 50°27'48" E 325.00 feet; thence N 82°23'05" E 1830.00 feet; thence N 14°30'07" E 912.32 feet; thence N 84°24'28" W 1,020.54 feet; thence S 14°30'07" W 386.43 feet; thence S 82°23'05" W 941.02 feet; thence N 5°35'32" E 750.00 feet; thence N 35°53'07" W 758.44 feet to a line which bears N 46°50'24" E from the true point of beginning' thence S 46°50'24" W 1,028.82 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-430-17. (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 periods. 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 7, 1989 (Appendix 3). 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 Cleanup 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, State Coastal Commission, State Lands Commission, 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,1 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 to 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-430-17.

If buoys or stakes used to mark this lease are lost, displaced or other wise removed 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 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

MARTIN STRAIN  
Point Reyes Oyster Co.  
P. O. Box 16  
Tomales, CA 94971

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

By: Robert R Treanor

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME

By: Dawn Casada  
Lessor

POINT REYES OYSTER CO.

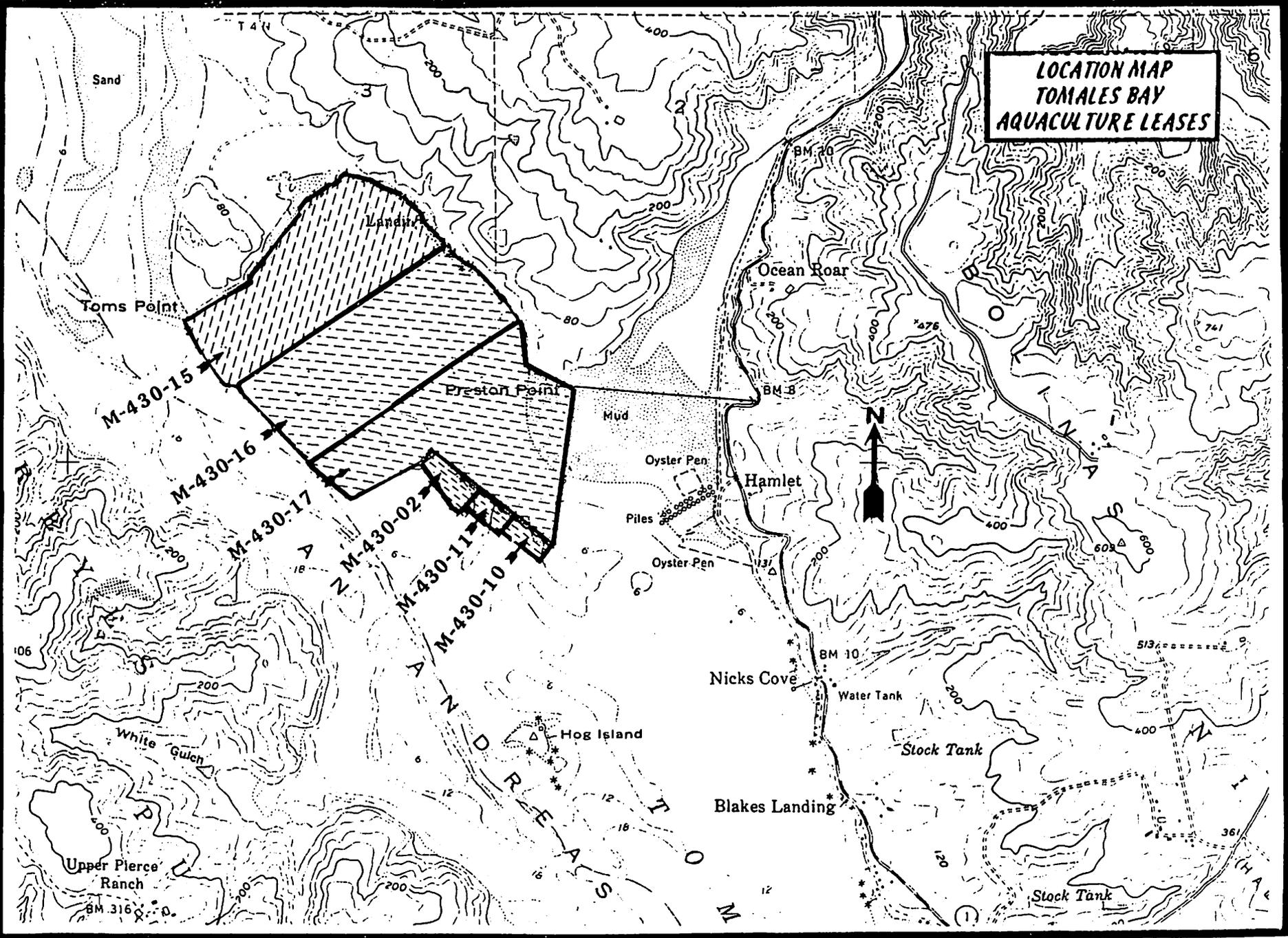
By: Martin Strain  
Lessee

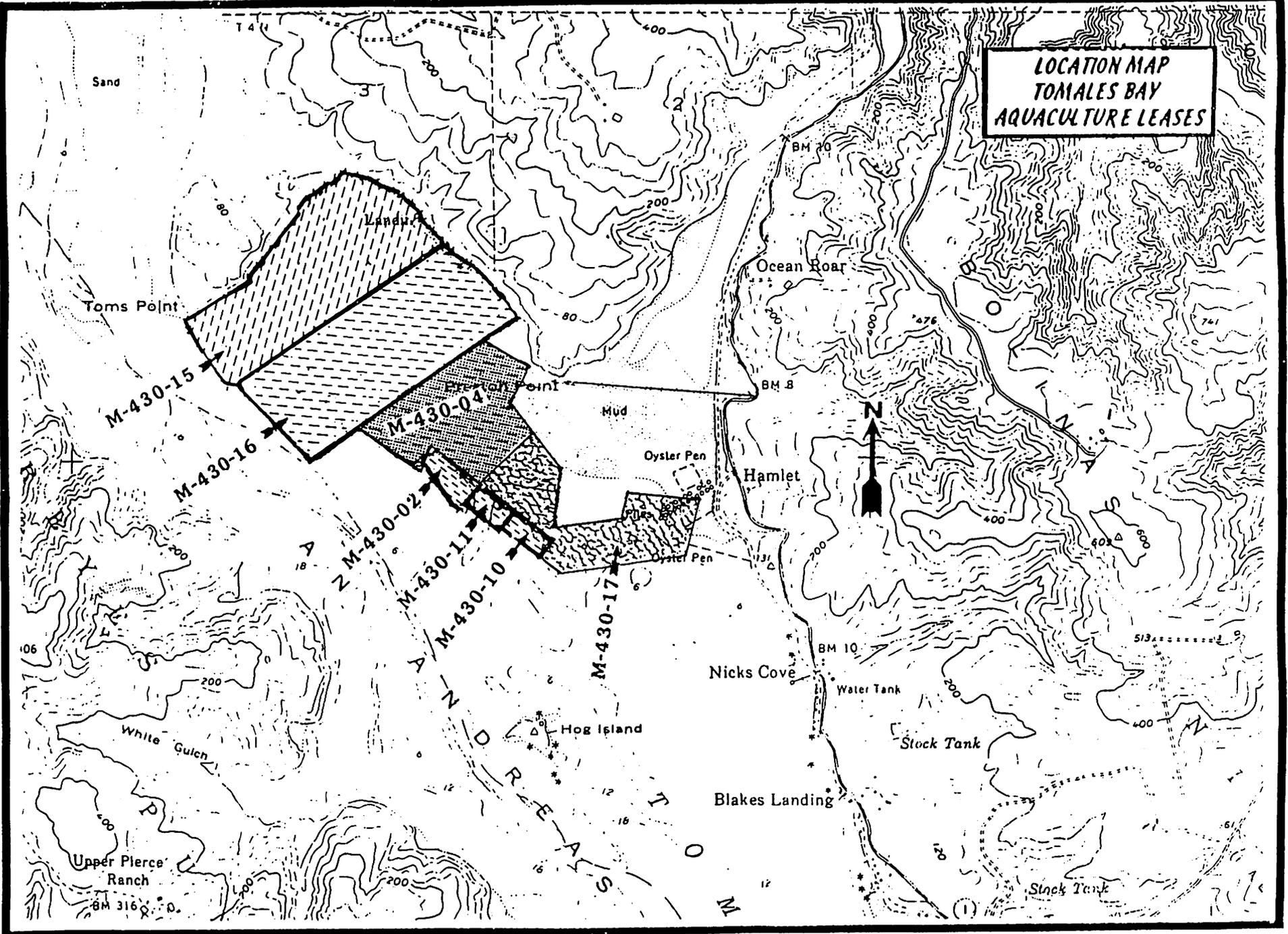
ADDENDUM TO  
AQUACULTURE LEASE  
BETWEEN  
DEPARTMENT OF FISH AND GAME, LESSOR  
AND  
POINT REYES OYSTER COMPANY

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.





ADDENDUM TO  
AQUACULTURE LEASE  
BETWEEN  
DEPARTMENT OF FISH AND GAME, LESSOR  
AND  
~~SHELLFISH UNLIMITED~~ *Point Reyes Oyster 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 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~~, *Point Reyes Oyster* hereinafter referred to as "Lessee", and Tomales Bay ~~Shellfish Growers Association~~, *System* a California Nonprofit Corporation now forming, hereinafter referred to as the *Company* "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:

- \$224.75*  
(a) ~~\$449.50~~ deposited upon entering upon the lease;  
*\$449.50*  
(b) ~~\$449.50~~ deposited upon the first anniversary of such inception date.  
*\$224.75*

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:

**PT. REYES OYSTER COMPANY**  
P. O. Box 16  
Tomales, CA 94971

~~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. Meyerle  
Acting Asst. Director, Admin.

ASSOCIATION: \_\_\_\_\_

LESSEE: ~~Lisa Jang~~  
Martin G. Garpain

**INDIVIDUAL ACKNOWLEDGMENT**

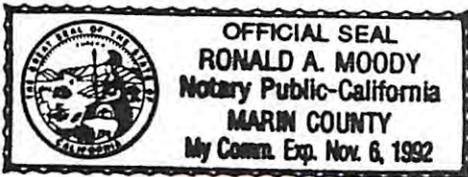
NO. 201

State of Calif.  
County of San Mateo } SS.

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

Ronald A. Moody  
the undersigned Notary Public, personally appeared

Martin G. Garpain



personally known to me  
 proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is 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 11-430-17  
Number of Pages 13 Date of Document signed 2-4-91  
Signer(s) Other Than Named Above \_\_\_\_\_

**AMENDMENT NO. 3  
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 Point Reyes Oyster Company, Inc., 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 (2) 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 lease into two parcels of reduced size (said Lease M-430-17, 61.9± acres and Lease M-430-19, 61.9± acres), 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.

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, California 95814
---------------	--

To the Lessee	MARTIN STRAIN POINT REYES OYSTER COMPANY P. O. Box 16 Tomales, California 94971
---------------	--

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: \_\_\_\_\_

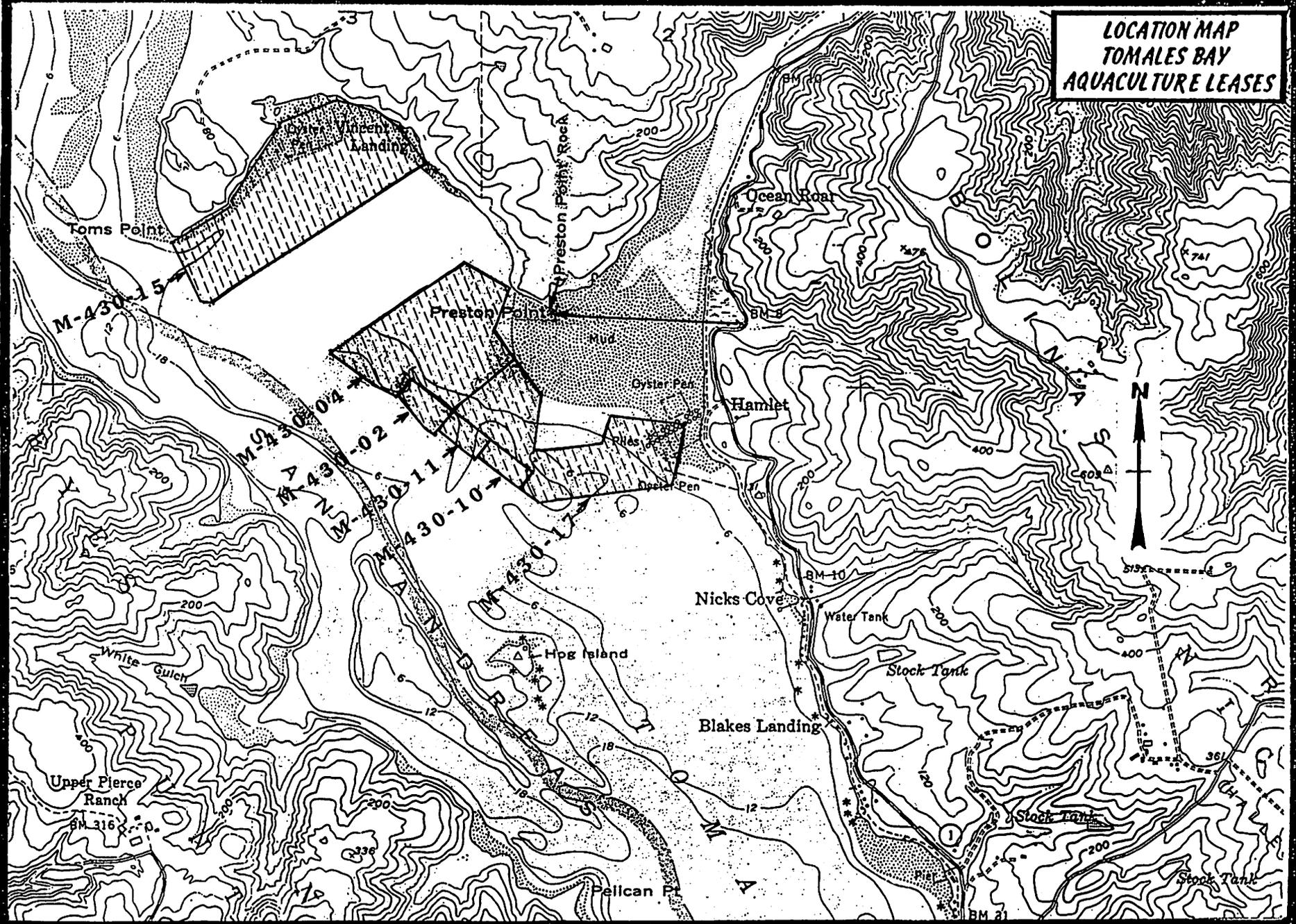
By: \_\_\_\_\_

POINT REYES OYSTER COMPANY, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

LOCATION MAP  
TOMALES BAY  
AQUACULTURE LEASES



**ADDENDUM TO  
AQUACULTURE LEASE  
BETWEEN  
DEPARTMENT OF FISH AND GAME, LESSOR  
AND  
POINT REYES OYSTER 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 Point Reyes Oyster Company, Inc. 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-430-17.

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 \$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: Martin Strain  
Point Reyes Oyster Company, Inc.  
P. O. Box 16  
Tomales, California 94971

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: \_\_\_\_\_

\_\_\_\_\_

**AMENDMENT NO. 4  
TO  
INDENTURE OF LEASE**

This amendment of Aquaculture Lease is made and entered into as of the 15<sup>th</sup> day of June 2000, by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor", and Point Reyes Oyster Company, Inc., 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 (2) 61.9 ± acres parcels and

**WHEREAS**, on February 5, 1993 the Fish and Game Commission approved the reconfiguration and redescription of said acres into two parcels of reduced size (said Lease M-430-17, 61.9 ± acres and Lease M-430-19, 61.9 ± acres), and

**WHEREAS**, the Fish and Game Commission adopted new administrative procedures at its meeting on October 7, 1994 to standardize proof-of-use reporting and rental periods, 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, and

**WHEREAS**, Lessee has requested, at a duly called and noticed hearing of the Fish and Game Commission on June 15, 2000, an amendment to the lease agreement to allow the culturing of Manila clams in the ground under netting.

**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 authority to culture Manila clams in the ground under netting 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 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 2,128.4 feet; thence South 50°27'48" East 807.0 feet to the true point of beginning; thence South 50°27'48" East 1,423.2 feet; thence South 39°32'12" West 351.0 feet; thence South 50°27'48" East 325.0 feet; thence North 82°23'05" East 1,830.0 feet; thence North 14°30'07" East 912.32 feet; thence North 84°24'28" West 1,020.54 feet; thence South 14°30'07" West 386.43 feet; thence South 82°23'05" West 941.02 feet; thence North 5°35'32" East 750.0 feet; thence North 35°53'07" West 758.44 feet to a line which bears North 46°50'24" East from the true point of beginning; thence South 46°50'24" West 1,028.82 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-430-17

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*), Suminoe oyster (*C. arakensis*), Eastern oyster (*C. virginica*), European flat oyster (*Ostrea edulis*), Native oyster (*O. lurida*), Manila clam (*Tapes japonica*), California sea mussel (*Mytilus californianus*), and bay mussel, (*M. edulis*)

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 confined to long lines, raft, stakes, racks and bags, rack and tray, floats, on the bottom, or bottom culture with net cover 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:

S. Net cover shall be restricted to the culture of the Manila clam. Netting mesh size shall be at least one-half inch. Net material shall be removed and disposed of on land when no longer servicable.

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: Robert R. Treanor  
Robert R. Treanor, Executive Director

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME

By: Brenda K. Duncan  
Lessor

for  
Michael F. Harris,  
Deputy Director, Administration

POINT REYES OYSTER COMPANY, INC.

By: Martin Stump, Pres.  
Lessee





**CALIFORNIA  
AQUACULTURE  
ASSOCIATION**

P. O. BOX 1004  
NILAND, CA 92257  
(619) 359-FISH

**EXECUTIVE DIRECTOR**

JUSTIN MALAN  
3700 Chaney Court  
Carmichael, CA 95608  
916-944-7315

**1994 OFFICERS**

TOM JOHNSON  
*President*

TONY VAUGHT  
*Vice President*

DALLAS WEAVER  
*Vice President*

GEORGE RAY  
*Secretary*

HUGH STATON  
*Treasurer*

**BOARD OF DIRECTORS**

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*Chairman of the Board*

KIETH BROWN  
GEORGE CURTH

MIKE GAFFORD

H. ROY GORDON

GARY R. GRACE

TOM JOHNSON

JIM KAHLE

RICHARD MURRISON

GEORGE RAY

HUGH STATON

PETER STRUFFENEGGER

F. ROBERT STUDDERT

TONY VAUGHT

DALLAS WEAVER

**May 19, 1994**

**Mr. Rob Collins  
CA DFG  
PO Box 944209  
Sacramento, CA 94244-2090**

**RE: Tomales Bay Cleanup Fund**

**Enclosed is a copy of check # 3311 received from Point Reyes Oyster Company in the amount of \$762.00 for leases M-430-08, M-430-13 and M430-17. This check has been deposited in the Tomales Bay Cleanup Fund account, per attached copy of the deposit book.**

**Sincerely,**

**George Ray, Secretary  
California Aquaculture Association  
Escrow Agent for Tomales Bay Cleanup Fund**

**cc: Staton  
Pt Reyes Oyster Co**



Point Reyes Oyster Company, Inc.  
P.O. Box 16  
Tomales, CA 94971  
(707) 765-6010

January 31, 2015

Zonke Mastrup,  
Executive Director  
California Fish and Wildlife Commission  
1416 Ninth Street  
P.O. Box 944209  
Sacramento, CA 94244-2090

RECEIVED  
CALIFORNIA  
FISH AND WILDLIFE  
COMMISSION

2015 FEB -5 PM 3:06

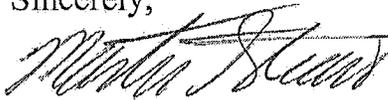
M/S

Re: Renewal of Aquaculture Leases M430-13 & M430-17, Tomales Bay,  
Marin County

Dear Mr. Mastrup:

The initial 25-year term of aquaculture leases M430-13 and M430-17 ,  
located on Tomales Bay, Marin County, California, expires on February 29,  
2016. These leases have been in continuous aquaculture use since operations  
commenced in 1991. We would like to exercise our option to renew these  
leases. We can be reached at the above referenced address for discussions of  
terms. Thank you for your consideration.

Sincerely,



Martin Strain, President  
Point Reyes Oyster Company, Inc.

Cc: Kirsten L. Ramey, Marine Region Aquaculture Coordinator

## Memorandum

Date: January 13, 2016

To: Fish and Game Commission

From: Charlton H. Bonham  
Director



Subject: **Agenda Item for the February 10-11, 2016, Fish and Game Commission Meeting Regarding Proposed Renewal of State Water Bottom Lease, M-430-13, Point Reyes Oyster Company, Tomales Bay, Marin**

Mr. Martin Strain, Point Reyes Oyster Company, is requesting Fish and Game Commission (Commission) approval to renew state water bottom lease M-430-13 for a period of 15 years. The existing lease encompasses 25 acres of state water bottom tidelands in Tomales Bay and is set to expire on February 29, 2016.

The original 1984 state water bottom lease, M-430-13, was created with the expressed intent to cultivate Pacific oysters (*Crassostrea gigas*), Suminoe oysters (*C. ariakensis*), Eastern oysters (*C. virginica*), European flat oysters (*Ostrea edulis*), native oysters (*O. lurida*), Manila clams (*Venerupis philippinarum*), California sea mussels (*Mytilus californianus*), and bay mussels (*M. edulis*) and has been used for this purpose by Point Reyes Oyster Company since 1993.

The Commission received a request in February, 2015, to amend lease M-430-13, to include various species of algae to the list of approved species for aquaculture purposes. The Department of Fish and Wildlife (Department) continues to work on its review and recommendation for this request. The Department will be forwarding a recommendation on the lease amendment request to the Commission at a later time. Thus, for the lease renewal, the Department is not recommending any proposed changes in the culture methods or to the above list of species currently approved by the Commission. However, if the lease renewal is approved, the lease will require the Lessee to establish financial assurances of growing structure removal and/or cleanup in the event the lease is abandoned or otherwise terminated.

Upon staff review, it was determined that the proposed project is subject to the "Class 1" or "Existing Facilities" categorical exemption pursuant to CEQA Guidelines section 15301 (Cal. Code Regs., tit. 14, §15301). In general, the Class 1 exemption consists of the leasing of existing facilities, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. All provisions of the lease are identical to the original lease, with the only exception being the 15 year renewal of the lease term. This lease does not increase, decrease, or change existing operations in any way or allow for any new activities by the lessee.

The Department recommends approval of the request to renew state water bottom lease, M-430-13, Point Reyes Oyster Company, to Mr. Martin Strain for a period of 15 years.

If you have any questions regarding this item, please contact Dr. Craig Shuman, Regional Manager of the Department's Marine Region, at (805) 568-1246.

Attachments

ec: Craig Shuman, D.Env., Regional Manager  
Marine Region (7)  
[Craig.Shuman@wildlife.ca.gov](mailto:Craig.Shuman@wildlife.ca.gov)

Kirsten Ramey, Senior Environmental  
Scientist Supervisor  
Marine Region (7)  
[Kirsten.Ramey@wildlife.ca.gov](mailto:Kirsten.Ramey@wildlife.ca.gov)

Randy Lovell, State Aquaculture  
Coordinator  
[Randy.Lovell@wildlife.ca.gov](mailto:Randy.Lovell@wildlife.ca.gov)

## Memorandum

Date: January 13, 2016

To: Fish and Game Commission

From: Charlton H. Bonham  
Director



Subject: **Agenda Item for the February 10-11, 2016, Fish and Game Commission Meeting Regarding Proposed Renewal of State Water Bottom Lease, M-430-17, Point Reyes Oyster Company, Tomales Bay, Marin**

Mr. Martin Strain, Point Reyes Oyster Company, is requesting Fish and Game Commission (Commission) approval to renew state water bottom lease M-430-17 for a period of 15 years. The existing lease encompasses 61.9 acres of state water bottom tidelands in Tomales Bay and is set to expire on February 29, 2016.

The original 1991 state water bottom lease, M-430-17, was created with the expressed intent to cultivate Pacific oysters (*Crassostrea gigas*), Suminoe oysters (*C. ariakensis*), Eastern oysters (*C. virginica*), European flat oysters (*Ostrea edulis*), native oysters (*O. lurida*), Manila clams (*Venerupis philippinarum*), California sea mussels (*Mytilus californianus*), and bay mussels (*M. edulis*) and has been used for this purpose by Point Reyes Oyster Company since 1993.

The Commission received a request in February, 2015, to amend lease M-430-17, to include various species of algae to the list of approved species for aquaculture purposes. The Department continues to work on its review and recommendation for this request. The Department will be forwarding a recommendation on the lease amendment request to the Commission at a later time. Thus, for the lease renewal, the Department is not recommending any proposed changes in the culture methods or to the above list of species currently approved by the Commission. However, if the lease renewal is approved, the lease will require the Lessee to establish financial assurances of growing structure removal and/or cleanup in the event the lease is abandoned or otherwise terminated.

Upon staff review, it was determined that the proposed project is subject to the "Class 1" or "Existing Facilities" categorical exemption pursuant to CEQA Guidelines section 15301 (Cal. Code Regs., tit. 14, §15301). In general, the Class 1 exemption consists of the leasing of existing facilities, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. All provisions of the lease are identical to the original lease, with the only exception being the 15 year renewal of the lease term. This lease does not increase, decrease, or change existing operations in any way or allow for any new activities by the lessee.

The Department recommends approval of the request to renew state water bottom lease, M-430-17, Point Reyes Oyster Company, to Mr. Martin Strain for a period of 15 years.

If you have any questions regarding this item, please contact Dr. Craig Shuman, Regional Manager of the Department's Marine Region, at (805) 568-1246.

Attachments

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