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To: California Dept of Fish and Game (Attn: CDFG Director) 1416 9th St Sacramento CA 95814  
California Coastal Commission (Attn: CCC Director) 45 Fremont #2000, SF CA 94105- 2219  
Marin Dept of Health Services (Attn :DHS Director) 3501 Civic Center Dr #236; San Rafael CA 94903-4157  
State Board of Equalization (Attn: BOE Director) 121 Spear St #460, SF CA 94105-1584  
Point Reyes National Seashore (Attn: PRNS Superintendent), Point Reyes Station CA 94956

Dear Agencies:

The Sierra Club requests your investigation of potential violations by the Drakes Bay Oyster Company (DBOC) 17171 Sir Francis Drake Blvd., Inverness, California. regarding CDFG Leases M438-01/-02, CCC Cease and Desist Order (CDO) W6-12-2007, DHS Restaurant code, BOE required sale tax on food consumed on-site, and the PRNS Reservation of Use and Occupancy (RUO) for the DBOC premises.

**Cultivation of Species not permitted in CDFG Lease M-438-01/-02 or CDO W6-12-2007**

The Sierra Club requests CDFG, CCC and PRNS to enforce the prohibition on the cultivation of Kumamoto oysters by DBOC. Both Lease M-438-01 and CDO 3.2.7 allow the cultivation of Pacific oyster and European flat oyster only: "Cultivation of additional oyster species within this area shall not be allowed." Nevertheless, DBOC claims: "*shellfish species raised in Drakes Estero include...Kumamoto Oysters...produced as "singles" and sold* ([www.drakesbayfamilyfarms.com/products/oysters.html](http://www.drakesbayfamilyfarms.com/products/oysters.html))."

Furthermore, the Sierra Club requests CDFG, CCC and PRNS to enforce Lease M-438-02 and CDO 3.2.8 prohibition: "Cultivation of manila clams...and purple-hinged rock scallops...shall only occur...in the "cultivation area" defined in [Lease M-438-02]." We ask the CCC for DBOC's required plan for removal of these species outside M-438-02 and documentation that cultivation outside M-438-02 has ceased. We also believe DBOC may be violating CDO 3.2.2 by repairing oyster racks so long out of production that eelgrass has re-grown in an attempt to exceed the self-reported production cap of 466,719 lbs (1.8 times the 56-year average) per CDO 3.2.10. As of 9/10/08, DBOC had complied with virtually none of the CDO, so we ask CCC for an update.

**DBOC Food Items and Restaurant Operation not permitted under the RUO, DHS, or BOE**

The Sierra Club requests PRNS to enforce the prohibition against DBOC selling unauthorized food items. RUO Exhibit "C" reserves to DBOC a right for "the purpose of processing and selling wholesale and retail oysters, seafood and complimentary food items." Webster's defines complimentary as "given free as a courtesy or favor" (e.g. sauce to consume with oysters). However, we note that DBOC sells sauces as well as sausages and cuts of beef that are neither complimentary nor complementary to oyster sales. Also, even if DBOC's Kumamoto oysters are produced off-site to conform to CDFG and CCC regulations, then their sale violates the RUO authorizing on-site processing and sales (i.e. sale of only oysters produced on-site).

Lastly, the Sierra Club believes DBOC's sale of food items in a form suitable for consumption on DBOC premises at tables provided by DBOC qualifies as a taxable restaurant operation. We request that PRNS enforce RUO #18 that notes: "vendor cannot conduct a restaurant operation on the premises without prior written approval." Even if such approval is proposed, we request that the Department of Health Services first conduct and DBOC pass the appropriate inspection of the premises and that the Board of Equalization collect past sales tax due.

Sincerely,

Sierra Club Marin Group Parks Chair