



SIERRA CLUB MARIN GROUP

COASTAL SECTION c/o GORDON BENNETT

Box 3058 San Rafael CA 94912 40 Sunnyside Dr Inverness CA 94937
sanfranciscobay.sierraclub.org/marin 415-663-1881 gbatmuirb@aol.com

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Superintendent Don Neubacher
Point Reyes National Seashore
Point Reyes Station, CA 94956

Re: Johnson Oyster Company (JOC)

Dear Superintendent Neubacher:

On behalf of the Sierra Club's 7,000 Marin County members and our 750,000 national members, we urge Point Reyes National Seashore to review the status of the Johnson Oyster Company to determine if it is appropriate to allow JOC to continue operations and if so what the appropriate size of operations should be.

We understand that the Johnson Oyster Company may now be in escrow for potential sale to Mr. Kevin Lunny who operates a ranch in PRNS. Mr. Lunny has been a good steward of that ranch and we would expect him to be a similar good steward of JOC through to its closure date of 2012. Nevertheless, in light of the sordid past of JOC, the potential to do further damage and acknowledging that Mr. Lunny may not complete the purchase or may re-sell again to another less-responsible operator, we urge that PRNS should impose additional restrictions on any JOC operations continuing through to the 2012 closure date.

A brief review of JOC past operations serves to exemplify our concern that future operations should not follow this same path. Johnson's Oysters has been under Park orders, County orders, State orders, Court orders and Coastal Commission orders to correct numerous and long-standing violations of environmental law, health and safety codes, and building codes. Environmental violations include pollution of the estuary from septic and packing facility washout as well as threatened impact from pathogens in Mexican oysters that JOC proposed to import. Health code violations most recently arose from three separate episodes of illness reported after eating Johnson oysters in July of 2004 and are listed in California Health Department letters dated 8/5 and 12/1/04. Other health and safety code violations, documented in the PRNS memorandum of 2/27/04, include operating both a septic system and water system in violation of Marin County health and safety codes. The memorandum also notes that JOC maintained and constructed numerous buildings without County or State permits or NPS authorization. The Sierra Club also believes that JOC has been and continues without NPS authorization to use for commercial purposes an area of public land that is outside the designated Reservation of Use.

These violations are even more egregious considering that the Johnson Oysters growing area has been designated to become part of the Phillip Burton Wilderness Area when the lease expires in 2012 as required by the Wilderness Act (16 U.S.C. 1131-1136), the Point Reyes Wilderness Act (PL 94-544), and NPS Management Policies 2001 Section 6.2.2.1. In accordance with these laws and policies, PRNS has consistently taken actions to remove conflicting uses from other potential wilderness areas so that they can become full wilderness and we urge that action be taken for JOC. Drake's Estero, where JOC grows its oysters, is the only large estuary in California that has wilderness quality.

We also understand that JOC is claimed to be the only remaining oyster packing plant in California and therefore should be preserved as an operating cultural resource. We disagree that JOC, if it is determined to be a cultural resource, can only be preserved by means of continued operation. Wilderness must also be preserved and there are alternative ways for PRNS to interpret cultural resources other than by supporting their continued operation.

At its establishment, considerable testimony was provided that PRNS was expected to maintain its "ranching and dairying" operations. There were also many other activities, including oystering, taking place on land designated for inclusion in PRNS, but none of these other activities were intended to continue forever under PRNS's public ownership. In fact, the cessation of these other activities, including oystering, was precisely the reason PRNS was formed.

While we are sympathetic to those of the local community who have bought oysters at Johnson for over 40 years, there are other nearby oyster operations that also produce and sell retail but that do not occupy National Park land and do not prevent the Congressionally mandated conversion of a unique estero to wilderness. The purpose of our letter is not only to insure that JOC closes in 2012 as Congress intended, but also that interim operations be appropriate.

We believe that JOC has been making a good profit despite inadequate management and despite using only a portion of its oyster growing area. Our concern is that with competent management and an expansion to the full extent of JOC's bottom lease acreage, JOC will become, in colloquial terms, a gold mine whose profits will flow disproportionately to the new operator and inadequately to the public, whose land and water the operation both depends on and impacts. Our choice of the term "goldmine" was not accidental, since this same disproportionate share of profits occurs under the infamous Mining Act which gives away mining rights on public lands for a pittance.

PRNS should not allow JOC to follow this Mining Act example. Restrictions on any JOC operation through 2012 should go well beyond simply following all of the Reservation of Use conditions, County code, State Health Department Codes and Coastal Commission Codes from this point forward.

No further JOC operation should be permitted until impacts from prior operations have been corrected and new understandings reached:

- 1) All non-permitted or unauthorized structures should be removed.
- 2) All debris should be removed, not just from the JOC land sites, but also throughout the estuary.
- 3) A bond should be required sufficient to insure the complete removal of all remaining structures, oyster racks, etc at the 2012 lease expiration.
- 4) An Environmental Assessment document should be completed so that the full impacts of the proposed use permit can be known and mitigated.
- 5) JOC should submit a business plan that documents its ability to return the \$420,000 purchase price plus added investment without violating agreements with PRSN or extending operations past 2012.
- 6) The scope of JOC operations in the estero should be appropriately sized to produce a fair and reasonable profit to any JOC operator.

The Sierra Club believes the business plan will show that the appropriate size for JOC operations going forward is considerable smaller than the full extent of JOC's current DFG bottom lease acreage in Drakes Estero. We also understand that the Environment Action Committee of West Marin (EAC) has suggested a reduced scale for JOC that calls for removing both retail sales and packing operations from the park site. However, at a meeting convened by EAC with Mr. Lunny, he indicated that retail sales were JOC's largest profit center, that trucking Drakes Estero oysters to an off-site packing plant was costly, and that JOC was currently packing Washington oysters off-site to wholesale during the several month period during which no JOC oysters from the estero would be available.

On the basis of our brief conversation with Mr. Lunny and acknowledging that the JOC business plan that should inform these discussions is yet to be prepared, we nevertheless suggest that JOC operations should be appropriately sized to reduce impacts in a manner similar in concept but differing in details from EAC's.

For example, if the average price of JOC oysters sold is \$10/dozen and the average cost of production etc is \$6/dozen, then a total investment of \$500,000 at a 10% return plus return of capital at 2012 would require cumulative profits to equal about \$1,000,000, i.e. the sale of about 31,250 dozen oysters per year over eight years. We believe that this level of oyster production in Drakes Estero could be accomplished in a much smaller area than JOC now occupies.

We acknowledge that the above figures are modestly informed guesses, which may change when a formal business plan is submitted. But we do urge PRNS to require such a business plan that would provide information necessary to amend the interim JOC operating agreement to appropriately size any continuing JOC operations to return the maximum possible estero acreage to wilderness status while still providing a reasonable return to JOC.

Since we believe it likely that wholesale oysters make the least money yet consume the largest area of potential wilderness and since retail sales and on-site packing provide the most profit, we suggest that the business plan may show that limiting oyster racks in the estero to only that supply retail sales could constitute an appropriate size for ongoing JOC operations. The business plan may show that as many as three of the four arms of Drakes Estero (Barries Bay, Creamery Bay, and Home Bay) now occupied by JOC could be converted to wilderness status immediately, while still providing JOC with reasonable profits. Further limits to on-site retail sale and packing would be informed by the EA and the requirement that no new structures, wells or septic fields should be allowed. JOC's current packing of Washington oysters for wholesale in its Santa Rosa packinghouse is independent of the PRNS operations and we believe could continue to supply JOC's wholesale sales and supplement JOC profits earned from retail sale of Drakes Estero oysters.

In summary, the Sierra Club urges PRNS to more vigorously carry out its mandated responsibilities to protect the American public's interest in and ownership of this National Seashore's lands and waters. We are very concerned that the current less-than capacity scope of JOC's prior operations may be considerably expanded under new management and run at full speed right up until the expected full stop on the last day in 2012 of the JOC Reservation. The Sierra Club would support a reasonable return on JOC investments through 2012, but we also do not want a situation in which large sums of money become a huge incentive to attempt to delay closure past 2012.

We also believe that PRNS has an obligation to the public to insure that the public lands are leased for rates that provide for reasonable, but not exorbitant, profits to lessees, as well as provide reasonable returns to the public. In this case, we suggest that the reasonable return to the public consist largely of the return of as much of Drakes Estero as possible to wilderness. We urge that PRNS require a business plan that will inform its decision as to what the approximate size of JOC operations should be through 2012. PRNS has the authority to condition the required use permit to achieve this appropriate size, or alternatively, the authorities to terminate the Reservation, and/or to exercise the right-of-first refusal on the transfer of JOC. We urge that PRNS act appropriately, fairly and firmly. Please keep us informed about this matter, which we consider a high priority. Thank you for your attention to this matter

Gordon Bennett
Sierra Club Marin Group Chair / SF Bay Chapter Executive Committee

cc: Kevin Lunny