

STAFF SUMMARY FOR APRIL 18-19, 2018

3. SANTA BARBARA MARICULTURE (CONSENT)**Today's Item**Information ☐Action ☒

Approve state water bottom lease No. M-653-02 for Santa Barbara Mariculture.

Summary of Previous/Future Actions

- Approve lease renewal for No. M-653-02 and new adjacent lease area Feb 7-8, 2018; Sacramento
- **Today approve lease Apr 18-19, 2018; Ventura**

Background

At its Feb 2018 meeting, FGC took action on two requests from Santa Barbara Mariculture related to leasing state water bottoms located offshore from Santa Barbara, to:

1. Approve renewal of its existing State Water Bottom Lease No. M-653-02; and
2. Approve a new lease adjacent to State Water Bottom Lease No. M-653-02, based on the mitigated negative declaration prepared pursuant to the California Environmental Quality Act and adopted by FGC.

A map of the lease areas is provided in Exhibit 1. In addition, FGC directed staff to prepare a single lease document covering both the renewed and new state water bottom lease areas, and to schedule approval of the final lease at the Apr meeting to specify several lease terms that were approved in concept:

- A lease term of 15 years with right to renew for 10 additional years (totaling 25 years);
- An annual rental rate of \$50 per acre (the minimum productivity rate) with minimum planting and harvesting requirements specified;
- A 3-year rental rate phase-in from the current rate of \$5 per acre to the new rate of \$50 per acre, to accommodate time needed to complete permitting and expand growing areas to support production; and
- Inclusion of measures identified in the mitigated negative declaration.

For more background, see the lease timeline history and staff summary from the Dec 2017 meeting (exhibits 2 and 3).

Exhibit 4 provides the draft lease for approval, which includes standardized terms and conditions, and integrates unique terms and conditions proposed to achieve the lease term concepts listed above.

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

FGC staff: Under a motion to adopt the Consent Calendar, adopt the proposed lease and terms as presented in Exhibit 1, including a rental rate phase-in of \$15/acre in Year 1, \$30/acre in Year 2, and \$50/acre in Year 3.

STAFF SUMMARY FOR APRIL 18-19, 2018

DFW: Adopt the proposed lease.

Exhibits

1. [Map of Santa Barbara Mariculture lease areas](#)
2. [Lease timeline history, 1984 to Feb 2018](#)
3. [Staff summary from Feb 7-8, 2018 meeting \(for reference purposes only\)](#)
4. [Draft Lease No. M-653-02, dated Apr 11, 2018](#)

Motion/Direction

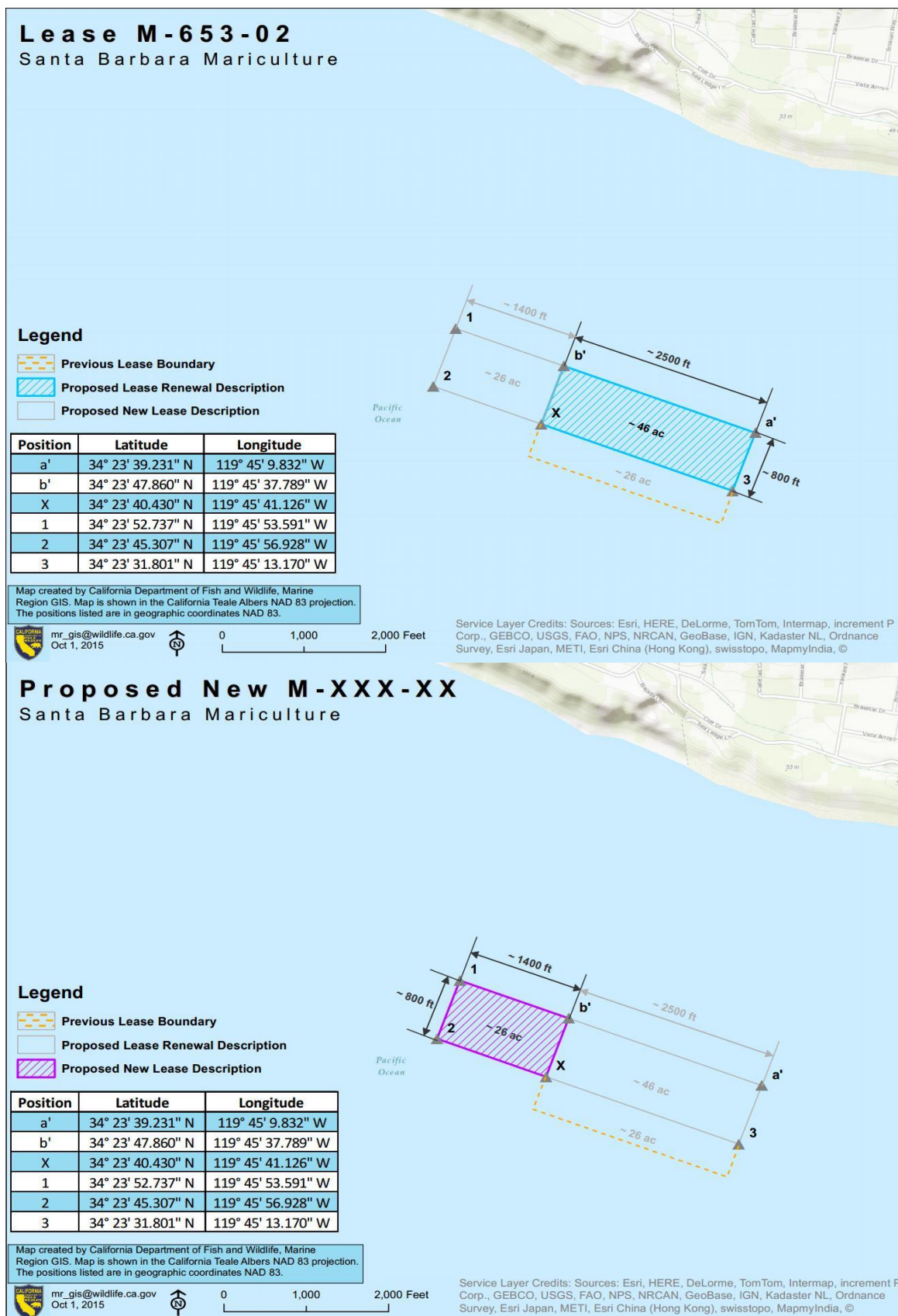
Moved by _____ and seconded by _____ that the Commission adopts the Consent Calendar, items 3-7.

Santa Barbara Mariculture Offshore Farm

Map 1: Project Vicinity



Map 2. New lease location as approved by the Fish and Game Commission in February 7, 2018.



California Department of Fish and Wildlife Lease Timeline (Revised January 30, 2018)

Lease No: M-653-02
Company: Santa Barbara Mariculture
Owner: Bernard Friedman
Lease Location: Open ocean off Santa Barbara

Action	Action Start	Action Expiration	Notes
Original Lease granted to Jeff Young (under Pacific Seafood Industries)	2/15/1984	2/14/1989	
Lease transferred to SB Mariculture	11/3/2005	11/2/2010	FGC at its meeting on 11/3/2005 authorized transfer of title of lease from Pacific Seafood Industries to Santa Barbara Mariculture Company
FGC approved 90-day extension at its 10/21/2010 meeting	11/2/2010	2/1/2011	
FGC approved 180-day extension at its 12/16/2010 meeting	2/1/2011	7/31/2011	
FGC approved 180-day extension at its 6/30/2011 meeting	7/31/2011	1/27/2012	
FGC approved one year extension at its 8/03/2011 meeting	1/27/2012	1/27/2013	
FGC approved one year extension at its 8/08/2012 meeting	1/27/2013	1/27/2014	
Applicant requested re-shaping of lease, maintaining equivalent acreage	1/27/2014	1/27/2015	
Extension requested by Department (FGC mtg 12/9/2015) to complete administrative process	1/27/2015	1/27/2016	December 2014 FGC mtg: 1-yr extension under same terms and conditions approved
Extension requested by Department (FGC mtg 12/3/2014) to complete CEQA process with applicant	1/27/2016	1/27/2017	December 2015 FGC mtg: 1-yr extension under same terms and conditions approved
Extension requested by Department (FGC mtg 12/7/2016) to complete CEQA process with applicant	1/27/2017	6/27/2017	December 2016 FGC mtg: 180-day extension under same terms and conditions approved
Extension requested by Department (FGC mtg 6/27/2017) to complete CEQA process with applicant	6/27/2017	1/27/2018	June 2017 FGC mtg: 180-day extension under same terms and conditions approved
Extension requested by staff (FGC mtg 12/7/2017) to complete CEQA circulation period and draft lease agreement	12/7/2017	7/27/2018	December 2017 FGC mtg: 180-day extension under same terms and conditions approved
Approve renewal of lease M-653-02, adopt MND pursuant to CEQA, approve new adjacent lease	2/8/2018	In 2033, on date 15 years after date of last signature	Proposed for February 2018 FGC mtg: Lease renewal, new lease approval, and combined single lease with special terms and conditions

FGC = California Fish and Game Commission
Department = California Department of Fish and Wildlife

CEQA = California Environmental Quality Act
MND = mitigated negative declaration

STAFF SUMMARY FOR FEBRUARY 7-8, 2018

19. SANTA BARBARA MARICULTURE (CONSENT)

Today's Item

Information ☐Action ☒

- (A) Approve request to renew, as modified, State Water Bottom Lease No. M-653-02 for aquaculture in Santa Barbara; and
- (B) Approve application, and adopt the CEQA mitigated negative declaration, for a new state water bottom lease adjacent to existing Lease No. M-653-02.

Summary of Previous/Future Actions

(A)

- Received request for lease renewal Aug 18, 2010
- Received revised request for lease renewal Jun 27, 2013
- Approved short-term lease extensions 2010 – 2017; FGC meetings
- **Today approve request for lease renewal** Feb 7-8, 2018; Sacramento

(B)

- Received request for new lease as part of lease M-653-02 renewal Jun 27, 2013
- FGC finding that new lease is in public interest Aug 4, 2015; Fortuna
- **Today approve the new lease and adopt the mitigated negative declaration** Feb 7-8, 2018; Sacramento

Background

FGC has the authority to lease state water bottoms to any person for aquaculture purposes for a period of up to 25 years, if such a lease is in the public interest (Section 15400, Fish and Game Code). The 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). A template lease agreement, approved by FGC in 2011 with standardized terms, conditions, and fee structure, forms the basis for new and renewed lease agreements (Exhibit 1); unique terms and conditions may be agreed upon and specified in individual leases.

Santa Barbara Mariculture has held FGC-issued State Water Bottom Lease No. M-653-02 since 2005 (exhibits 2 and 3). Following a multi-year process to review the request for lease renewal and reconfiguration (Exhibit 4), two separate but interrelated discretionary actions are scheduled today for FGC consideration:

- A. Renewal of the existing lease, modified to remove the seaward-most 26 acres of the lease area; and
- B. Approval of a new lease for a 26-acre plot adjacent to the remaining shoreward-most portion of the existing lease area proposed for renewal.

For more background, see the staff summary from Dec 2017 (Exhibit 5).

STAFF SUMMARY FOR FEBRUARY 7-8, 2018

CEQA Review

An initial study and mitigated negative declaration were filed with the State Clearinghouse on Jan 8, 2018 for a 30-day public circulation period, ending Feb 7, 2018. The environmental review found no significant environmental impact resulting from the project, based on mitigation measures that lessen to less-than-significant certain minor biological impacts related to marine species entanglement, aquatic invasive species spread, bottom disturbance, and marine debris (Exhibit 6).

Lease Format and Unique Terms and Conditions

Staff has identified a list of unique terms and conditions to apply to both the renewed and new leases for FGC consideration:

- Single lease document: A single lease covering both the renewed and new state water bottom lease areas for administrative and management efficiency;
- Term: A lease term of 15 years with right to renew for an additional 10 years (totaling 25 years);
- New rental rate: An annual rental rate set at the minimum productivity rate of \$50 per acre, which is the default rate for any species other than oysters; accompanying minimum planting and harvesting requirements must also be specified in the lease (Section 237(i)(2), Title 14, CCR);
- 3-year rental rate phase-in: A phase-in of rental rate from current rate of \$5 per acre to the new rate of \$50 per acre. Before expansion of culturing operations can legally commence to support the increase in rate, the lessee must obtain additional permits after FGC approval. Therefore, staff has identified a three-year phase-in from the current to the new rental rate to accommodate the time needed to complete permitting and expand growing areas to support production; and
- Mitigation measures: Inclusion of measures identified in the mitigated negative declaration.

Today, FGC may approve these lease terms in concept, and direct staff to integrate the terms into the lease template for final lease approval at a subsequent FGC meeting.

Significant Public Comments

Letters of support were previously submitted by Grassy Bar Oyster Company, Inc. and by graduate students from the Bren School at UC Santa Barbara.

Recommendation

FGC staff: Under a motion to approve the consent calendar, approve the existing lease renewal for State Water Bottom Lease No. M-653-02; adopt the mitigated negative declaration prepared pursuant to the California Environmental Quality Act, and approve the new lease adjacent to State Water Bottom Lease No. M-653-02; approve terms as recommended above; and direct staff to schedule approval of the final lease at the Apr 18-19 meeting in Ventura.

DFW: Supports FGC staff recommendation.

STAFF SUMMARY FOR FEBRUARY 7-8, 2018

Exhibits

1. FGC lease agreement template
2. Map of Santa Barbara Mariculture lease areas
3. Lease No. M-653-02, dated Nov 3, 2005
4. Lease timeline history, 1984 to Dec 2017
5. Staff summary from Dec 6-7, 2017 meeting (reference purposes only)
6. Initial study and mitigated negative declaration

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the Consent Calendar, items 19-23.

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
State of California)
Fish and Game Commission)
1416 Ninth Street, Rm 1320)
Sacramento, CA 95814)
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-653-02**

THIS LEASE GRANTING THE EXCLUSIVE PRIVILEGE OF CONDUCTING AQUACULTURE AT STATE WATER BOTTOM NO. M-653-02 ("Lease") is made and entered into upon execution, by and between Santa Barbara Mariculture Company, ("Tenant") and the California Fish and Game Commission ("State") with reference to the following facts:

RECITALS

Whereas, 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; and

Whereas, The State authorized the transfer of title to Lease Agreement No. M-653-02 on November 3, 2005 from Pacific Seafood Industries to Santa Barbara Mariculture Company (hereinafter referred to as "Tenant"); and

Whereas, The State did on November 3, 2005 approve the renewal of Lease Agreement M-653-02 for a period of five years, containing an area of approximately 72 acres at a lease rate of five (\$5.00) dollars per acre; and

Whereas, the State did receive notice from the Tenant, dated August 10, 2010, requesting to exercise his right to renew lease of State Water Bottom No. M-653-02; and

Whereas, the State did approve a series of successive short-term extensions to the lease ranging from February 1, 2011 to the present; and

Whereas, the State did on June 27, 2013 receive from the Tenant a revised request to reconfigure the lease shape into a narrower configuration, while maintaining the same net acreage; and

Whereas, Tenant's request included acreage outside the then-current lease boundaries, the State did on December 3, 2014 determine that to renew as reconfigured would require a separate lease application for the proposed new area outside existing lease boundaries and requested Tenant to resubmit its request according to this determination; and

Whereas, the State did on December 3, 2014 approve a lease amendment to clarify lease boundaries according to reconciled GPS-survey coordinates; and

Whereas, the State did on May 5, 2015 receive from the Tenant a revised request, in response to the State's determination, to renew the existing lease as reduced by 26 acres, and an application for leasing of new state water bottoms outside the existing lease boundaries in an area consisting of 26 acres; and

Whereas, the State did on August 4, 2015 make a determination that, in compliance with Fish and Game Code Sections 15400(a) and 15404, consideration of the new area for lease would be in the public interest; and

Whereas, on February 8, 2018 the State approved renewal of Lease No. M-653-02 as revised to remove the seawardmost 26 acres, and approved the application for a new 26 acre lease parcel adjacent to the renewed Lease No. M-653-02; and

Whereas, both areas are henceforth combined into a single parcel under Lease No. M-653-02 for purposes of administrative efficiency;

Now, Therefore, State and Tenant agree as follows:

TERMS AND CONDITIONS

1. **LEASE.** The State hereby grants to Tenant the exclusive privilege to conduct aquaculture upon State Water Bottom No. M-653-02, subject to the terms and conditions of this Lease.

2. **DESCRIPTION.** This Lease covers that reconfigured area comprising approximately 72 acres, designated as State Water Bottom No. M-653-02 and shown on the attached Description (**Exhibit A**) and Maps (**Exhibit B**), which are made a part of this Lease by reference.

3. **TERM.** This Lease is for a term ("Term") commencing on date of final execution (_____) and ending FIFTEEN (15) years after (on _____) unless renewed or sooner terminated in accordance with its terms.

4. **ANNUAL RENT.** The annual base rent for the Lease area is calculated to recover Tenant's share of the State's operational costs of the aquaculture bottom leasing program attributable to shellfish cultivation and is based on tiered productivity values established by the State. 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

As this Lease authorizes the primary production of mussels in addition to the secondary production of oysters, the State approved the low productivity rate of **\$50.00 per acre/year** for this lease area, following a three-year phase-in of the annual lease rate according to

the following schedule, beginning with Term commencing on the date of lease execution, as follows:

- Year 1: \$15.00 per acre
- Year 2: \$30.00 per acre
- Year 3: \$50.00 per acre

Following Year 3, 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.

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, 12th Floor, Sacramento, California 95814 RE: State Water Bottom Lease No. M-653-02.

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 TEN (10) 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-653-02.

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.

(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. Minimum planting requirements for all shellfish species cultivated on this lease are, in combination, 5,000 individual seed planted per acre per year, and 2,000 singles harvested per acre per year.

(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.

Tenant shall record and report on its planting and harvesting activities each year in the annual proof-of-use statement required in Section 237(j), Title 14, California Code of Regulations. This report is a written declaration under penalty of perjury, that includes 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, to the Department of Fish and Wildlife's, Marine Region Aquaculture Project, currently contacted

at: 619 Second Street, Eureka, CA, 95501, telephone 707-445-5365. This contact information will be updated and maintained online at www.wildlife.ca.gov/aquaculture, or at such other place as the State may from time to time designate. The State may declare this lease terminated if Tenant at any time, is proven to be failing in good faith, to pursue the purpose of this lease.

13. NO WARRANTY. This Lease is made without warranty of title, condition or fitness of State Water Bottom No. M-653-02 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 P.O. Box 944209 Sacramento, CA 94244-2090 Telephone: (916) 653-4899 Facsimile: (916) 653-5040	Santa Barbara Mariculture Company Bernard Friedman Telephone: Email: bernard@sbmariculture.com
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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.

(a) This lease, in accordance with the 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 the following species in the previously designated area:

- Mediterranean mussel (*Mytilus galloprovincialis*)
- Pacific oyster (*Crassostrea gigas*)

All shellfish shall be cultured on buoyed submerged longlines, anchored to the bottom within the lease area planted by the Tenant in a manner approved by the State. No other mode of operation or culture method is authorized unless Tenant shall first obtain approval thereof from the State. Only the designated species planted in the specified lease area may be taken.

The cultivation of additional species of aquatic plants and animals requires the approval of the Fish and Game Commission. In compliance with Section 15200 et seq. of the Fish and Game Code, and Section 237 of Title 14, California Code of Regulations, and to assure that only healthy shellfish seed will be planted, seed stock must be inspected and certified before planting. A request for certification of seed stock will be submitted by the Tenant to the State at least ten (10) days prior of the proposed date of inspection.

(b) The notice of intent to plant shellfish on the lease shall be given to the Department of Fish and Wildlife's, Marine Region aquaculture project, whose current contact information is 619 Second Street, Eureka, CA 95501, telephone 707-445-5365. This

contact information will be maintained online at www.wildlife.ca.gov/aquaculture, or at such other place as the State may from time to time designate. In addition to the required ten (10) day notice, at least a 24-hour notice shall be given to the aquaculture supervisor or their designee, giving the details on where the shellfish can be inspected.

(c) In addition to annual rent, shellfish harvested from the lease is subject to the privilege taxes, and procedures for their payment, as established in Fish and Game Code, sections 15003 and, if applicable, 8051, as well as the applicable Title 14 regulations, including Section 237.

(d) Tenant shall comply with measures to avoid, minimize, and mitigate for potential environmental impacts resulting from the operation of mariculture activities on this lease to levels deemed less than significant as reflected by Mitigated Negative Declaration SCH #2018011009 certified by the State in association with this project in compliance with California Environmental Quality Act (CEQA) requirements and reflected in the attached Exhibit C.

EXHIBITS:

Exhibit A	Description of State Water Bottom Lease No. M-653-02
Exhibit B	Maps of State Water Bottom Lease No. M-653-02
Exhibit C	List of Incorporated Mitigation Measures

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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:

FISH AND GAME COMMISSION

TENANT:

SANTA BARBARA MARICULTURE COMPANY

By: _____
VALERIE TERMINI
Executive Director

By: _____
BERNARD FRIEDMAN
Owner

Date: _____

Date: _____

EXHIBIT A

Description of State Water Bottom Lease No. M-653-02

EXHIBIT A1

A portion of submerged lands within the Santa Barbara Channel, lying southerly of the Santa Barbara coast, in the County of Santa Barbara, in the State of California, described as follows.

LEASE SITE No.1

Commencing at the lighthouse near the bluff along the Pacific Ocean, at an approximate position of N 34° 23' 46.8", W 119° 43' 21.5";

thence westerly, approximately 9112 feet to a point having California State Plane Zone 5 (SPC5) grid coordinates of 1970460.00 feet North, 6032940.00 feet East, and having a geodetic position of N 34° 23' 39.231", W 119° 45' 09.832", the northeasterly corner and Point of Beginning of LEASE SITE No.1;

thence North 68°34'30" West, 2499.87 feet grid (2500.00 feet at mean sea level), to a point having SPC5 grid coordinates of 1971373.16 feet North, 6030612.88 feet East, and having a geodetic position of N 34° 23' 47.860", W 119° 45' 37.789";

thence South 21°25'30" West, 801.46 feet grid (801.50 feet at mean sea level), to a point having SPC5 grid coordinates of 1970627.09 feet North, 6030320.12 feet East, and having a geodetic position of N 34° 23' 40.430", W 119° 45' 41.126";

thence South 68°34'30" East, 2499.87 feet grid (2500.00 feet at mean sea level), to a point having SPC5 grid coordinates of 1969713.923 feet North, 6032647.24 feet East, and having a geodetic position of N 34° 23' 31.801", W 119° 45' 13.170";

thence North 21°25'30" East, 801.46 feet grid (801.50 feet at mean sea level), to the Point of Beginning.

The above geodetic SPC5 and geodetic positions are based on the NAD83 datum. The above described **LEASE SITE No. 1** contains 46.00 acres and is as shown on Exhibit B, attached hereto and made a part hereof for informational purposes.

This description has been prepared by me in accordance with provisions of the Professional Land Surveyors Act.

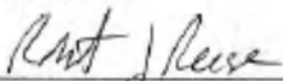
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Robert J. Reese, LS 6206



EXHIBIT A2

A portion of submerged lands within the Santa Barbara Channel, lying southerly of the Santa Barbara coast, in the County of Santa Barbara, in the State of California, described as follows.

LEASE SITE No.2

Commencing at the lighthouse near the bluff along the Pacific Ocean, at an approximate position of N 34° 23' 46.8", W 119° 43' 21.5";

thence westerly, approximately 9112 feet to a point having California State Plane Zone 5 (SPC5) grid coordinates of 1970460.00 feet North, 6032940.00 feet East, and having a geodetic position of N 34° 23' 39.231", W 119° 45' 09.832";

thence North 68°34'30" West, 2499.87 feet grid (2500.00 feet at mean sea level), to a point having SPC5 grid coordinates of 1971373.16 feet North, 6030612.88 feet East, and having a geodetic position of N 34° 23' 47.860", W 119° 45' 37.789", the northeasterly corner and Point of Beginning of LEASE SITE No.2;

thence North 68°34'30" West, 1412.93 feet grid (1413.00 feet at mean sea level), to a point having SPC5 grid coordinates of 1971889.28 feet North, 6029297.60 feet East, and having a geodetic position of N 34° 23' 52.737", W 119° 45' 53.591";

thence South 21°25'30" West, 801.46 feet grid (801.50 feet at mean sea level), to a point having SPC5 grid coordinates of 1971143.20 feet North, 6029004.84 feet East, and having a geodetic position of N 34° 23' 45.307", W 119° 45' 56.928";

thence South 68°34'30" East, 1412.93 feet grid (1413.00 feet at mean sea level), to a point having SPC5 grid coordinates of 197062709 feet North, 6030320.12 feet East, and having a geodetic position of N 34° 23' 40.430", W 119° 45' 41.126";

thence North 21°25'30" East, 801.46 feet grid (801.50 feet at mean sea level), to the Point of Beginning.

The above geodetic SPC5 and geodetic positions are based on the NAD83 datum. The above described **LEASE SITE No. 2** contains 26.00 acres and is as shown on Exhibit B, attached hereto and made a part hereof for informational purposes.

This description has been prepared by me in accordance with provisions of the Professional Land Surveyors Act.


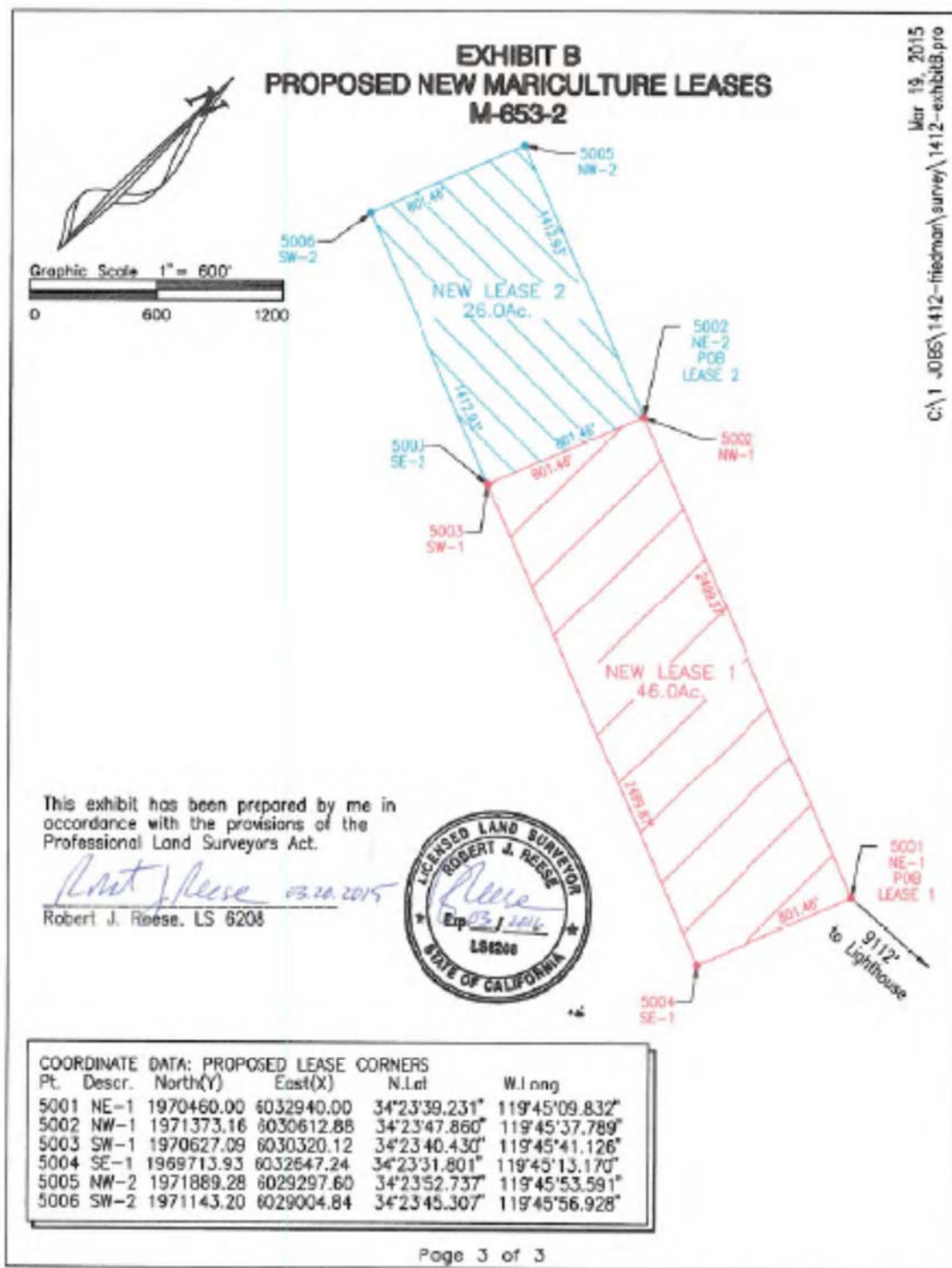

Robert J. Reese, LS 6208



EXHIBIT B

Maps of State Water Bottom Lease No. M-653-02



Mar 19, 2015
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Lease M-653-02 Santa Barbara Mariculture

Legend

-  Previous Lease Boundary
-  Proposed Lease Renewal Description
-  Proposed New Lease Description

Position	Latitude	Longitude
a'	34° 23' 39.231" N	119° 45' 9.832" W
b'	34° 23' 47.860" N	119° 45' 37.789" W
X	34° 23' 40.430" N	119° 45' 41.126" W
1	34° 23' 52.737" N	119° 45' 53.591" W
2	34° 23' 45.307" N	119° 45' 56.928" W
3	34° 23' 31.801" N	119° 45' 13.170" W

Map created by California Department of Fish and Wildlife, Marine Region GIS. Map is shown in the California Teale Albers NAD 83 projection. The positions listed are in geographic coordinates NAD 83.



mr_gis@wildlife.ca.gov
Oct 1, 2015



0 1,000 2,000 Feet

Service Layer Credits: Sources: Esri, HERE, DeLorme, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, ©

Proposed New M-XXX-XX Santa Barbara Mariculture

Legend

-  Previous Lease Boundary
-  Proposed Lease Renewal Description
-  Proposed New Lease Description

Position	Latitude	Longitude
a'	34° 23' 39.231" N	119° 45' 9.832" W
b'	34° 23' 47.860" N	119° 45' 37.789" W
X	34° 23' 40.430" N	119° 45' 41.126" W
1	34° 23' 52.737" N	119° 45' 53.591" W
2	34° 23' 45.307" N	119° 45' 56.928" W
3	34° 23' 31.801" N	119° 45' 13.170" W

Map created by California Department of Fish and Wildlife, Marine Region GIS. Map is shown in the California Teale Albers NAD 83 projection. The positions listed are in geographic coordinates NAD 83.



mr_gis@wildlife.ca.gov
Oct 1, 2015



0 1,000 2,000 Feet

Service Layer Credits: Sources: Esri, HERE, DeLorme, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, ©

EXHIBIT C
List of Mitigation Measures for
State Water Bottom Lease #M-653-02

Mitigation Measures (MM) – Tenant shall comply with the following mitigation measures, and follow Standard Operating Procedures, as reflected below and by this Project's Mitigated Negative Declaration (SCH #2018011009), certified by the State in compliance with California Environmental Quality Act (CEQA) requirements.

1. Marine species entanglement (MM BIO-1). To reduce potential impacts of marine species entanglement, Tenant shall conduct the following measures:

- a. Regular inspection and maintenance of gear for proper tensioning and evidence of wear or derelict gear or debris.** In order to reduce entanglement risk, Tenant shall conduct regular inspections and, at all times, maintain longline system tensioning and buoyancy. Loose or entangled derelict debris and lines will be removed and appropriately disposed of on land.
- b. Response training and reporting of incidents.** Tenant shall coordinate with and participate in first responder training provided by the NOAA Marine Mammal program. Coordination includes the immediate reporting of entangled marine mammals to the NOAA whale entanglement response hotline at 1-877-SOS-WHALE (1-877-767-9425) or the hailing of U.S. Coast Guard on Channel 16. If possible, Tenant will photograph entangled whales, capturing a side view of its dorsal fin or hump, flukes, head, and any part of the body where gear may be present, and the entangling gear material (e.g.: buoys, tags, lines, netting, etc.), and stand by for responders when appropriate. Entangled sea turtles shall be reported to the NOAA response hotline at 1- 866-767-6114, and similarly documented as described above.

Reports of all entanglements shall also be made immediately to the CDFW Aquaculture Program ([See Contact Information for Leaseholders](http://www.wildlife.ca.gov/Aquaculture#22164163-leases)) posted online: <http://www.wildlife.ca.gov/Aquaculture#22164163-leases>.

2. Aquatic invasive species spread (MM BIO-2). To reduce the potential spread of marine invasive species resulting from the Project, such as certain tunicates known to be problematic, the Tenant shall conduct the following measures.

- a. Awareness and training** – Tenant will coordinate with CDFW staff to generate and utilize invasive species identification guides and training materials on board its vessels and educate all farm personnel in the importance of identifying and taking of appropriate action if certain invasive species are encountered. Tenant will maintain updated materials corresponding with applicable CDFW priority invasive species local to the Project and the appropriate response actions.
- b. Responses** – Upon identification of an invasive species of concern on Tenant aquaculture gear, farm personnel will carefully remove the organism for disposal on land. Care shall be taken to avoid fragmenting such tunicates to reduce their spread.
- c. Maintenance** and gear inspection – Tenant will continue its practice of frequent inspection, cleaning, and rotation of culture gear to reduce the opportunity for invasive species to colonize its gear.

3. Storm preparedness and structural failure response (MM BIO-4). To reduce the potential impact of aquaculture gear structural failure resulting from the Project, the Tenant shall conduct the following measures.

a. Preparedness – Tenant will maintain all longline aquaculture gear, including anchoring, tensioning, and buoyancy components to avoid system failures at all times. Extra attention will be directed to storm preparation and inspecting for failures caused by extreme weather, waves, and currents, with full internal accounting for system components and structural integrity.

b. Structural failure response – Catastrophic failure of the longline system could occur if an anchor fails to hold or if the floats become overburdened or fail due to powerful storm activity. The longline system is naturally redundant; if one anchor fails to hold the culture gear in place, the other anchor serves as back up and works to keep the longline gear from moving far. If an anchor fails to hold, and drags toward the other anchor, the longline will reflect loss in tension (diagnosed by surface and subsurface buoy positions), or in an extreme case, will likely tangle among itself. A single anchor has enough holding force to secure the whole longline system, lowering the likelihood of the entire longline becoming derelict debris off-site. In the case of anchor failure or longline disruption, the tangled longline would be pulled and floated to the surface. The shellfish, culture gear, and floats would be untied or cut from the backbone and transferred to an empty longline. The tangled longline would be cut or untied from the anchor rode or anchor and hauled to the boat. A diver would be used to tie a new rode onto the anchor so that the boat can reposition it to the original position. A new longline would be attached to the anchor or anchor rode and tension would be applied. The boat would then travel along the backbone installing floats and weights to give the longline its proper shape. If floats become overburdened or fail, the longline would sink to the ocean floor. A grappling hook would be used to recover the longline and haul it to the surface where the failed floats can be replaced. Recovery would likely take from one to five days depending on the severity of catastrophic failure. New rope would always be used, and old rope would be repurposed for other uses. Damaged floats are recycled. Culture gear will be mended. Anchors are generally recovered and reused. Every effort is made to recover and re-use all gear. That which is beyond use will be appropriately disposed of on land.

4. Marine debris (MM BIO-5). To reduce the potential impact of marine debris resulting from the Project, the Tenant shall conduct the following measures.

a. Practices – All fasteners, lines, and components will, when detached from use or found to be compromised from wear, be disposed of appropriately on land. Fasteners, lines, and components of the longline system design and project operation will be chosen to minimize the risk of loss and contribution to marine debris in the ocean environment. Operational inspections of the Project's longline systems will include the retrieval and land disposal of entangled man-made materials, regardless of the materials' origin, to ensure their removal from the ocean environment.

b. Decommissioning plan – Should the farm need to be decommissioned and gear removed, Tenant shall harvest and remove all shellfish from the longline. Longline gear removal consists of a boat operator cutting the backbone in half, pulling the line and buoys onto the boat, and hauling in the anchors at the ends of the ropes using vessels of appropriate capacity. All components will be recycled or appropriately

disposed of on land.

5. Spill Prevention and Response Plan (Standard Operating Procedure). Tenant operates at sea, aboard a small vessel equipped for the unique work of an offshore mussel farm. Its Spill Prevention and Response Plan includes measures and practices to reduce the likelihood of problems arising in the first place.

The boat has a 130-gallon gasoline fuel tank made of ¼ -inch aluminum and built into the hull of the boat. The fuel tank is sealed with a waterproof cap to prevent liquid from entering or leaving the tank and the vent is screened. The boat is refueled at the Santa Barbara harbor fuel dock with absorbent pads in place to catch any incidental spills.

The boat also carries an 8-gallon hydraulic tank made of aluminum bolted to the boat hull filled with vegetable based hydraulic oil approved for use in food processing equipment, and is non-toxic and biodegradable. The tank is sealed with a waterproof cap to prevent fluid from entering or escaping.

A 13-hp auxiliary outboard engine is bolted to the boat hull and carries a 1.8 gallon steel tank which is sealed with a waterproof cap. The fuel used to refill this auxiliary engine is held in a 5 gallon spill-proof, Department of Transportation (DOT)-approved plastic container. The engine is shut down and an absorbent pad is used to catch any incidental spills during this process.

- a) Procedures and response equipment, that prevent potential spills and protect marine and shoreline resources in the event of a spill shall be updated continually and adhered to by Tenant's personnel.
- b) Spill prevention and response equipment shall be kept on board project vessels at all times. Absorbent pads will be used to quickly mop up any incidental spills. Absorbent pads are stored with the spare lubricants and are used during all refueling of equipment.
- c) Spare lubricants such as grease and oil are held in a sealed aluminum stowage compartment. The spare lubricants stored on board shall only be of quantities necessary for short-term operation and maintenance so as to minimize the amounts at risk at any given time.
- d) Emergency response and notification procedures, including a list of contacts to call in the event of a spill shall be kept at hand, on board project vessels at all times. In case of an oil or fuel spill where absorbent materials cannot accomplish the task, the Santa Barbara Harbor patrol will be hailed on Channel 12 to help contain the spill.
- e) Daylight-only farm operations, including vessel transit to and from the farm site, as well as obedience of all boating laws, nautical rules of the road (aka: Navigation Rules), and safe handling practices that will minimize the risk of boating accidents shall be adhered to.
- f) Outfitting and training in all procedures outlined above will be conducted for all new vessels and crew members. Practices will be updated as needed.