

STAFF SUMMARY FOR FEBRUARY 8-9, 2023

21. KELP HARVEST (CONSENT)**Today's Item****Information** ☐**Action** ☒

Consider approving a six-month extension of:

- (A) The Cultured Abalone Farm LLC's current five-year kelp harvest plan (KHP) (2018-2023)
- (B) The Cultured Abalone Farm LLC's existing lease for Administrative Kelp Bed 26 in Santa Barbara County

Summary of Previous/Future Actions**(A)**

- Commission approved KHP for 2018-2023 Apr 18, 2018
- **Today consider approving a six-month extension for current KHP and receive updated KHP** **Feb 8-9, 2023**
- Consider approving updated KHP for 2023-2028 TBD (potentially Apr 19-20, 2023)

(B)

- Commission awarded lease for kelp bed 26 May 26, 2011
- Commission received notice of intent to renew lease Nov 3, 2022
- **Today consider approving a six-month extension for the existing lease** **Feb 8-9, 2023**
- Consider approving lease renewal for Administrative Kelp Bed 26 for five years TBD (potentially Apr 19-20, 2023)

Background**(A) Kelp Harvest Plan**

The Commission must approve a KHP before a kelp harvester may use a mechanical harvester to harvest giant kelp (*Macrocystis pyrifera*) in any open or leasable administrative kelp bed (subsection 165(c)(6)); a KHP is also required for leases approved by the Commission for the exclusive privilege of harvesting kelp within a leasable administrative kelp bed (subsection 165.5(b)(2)). KHPs must be updated and submitted for Commission re-approval every five years.

The Cultured Abalone Farm LLC currently operates under a KHP approved for 2018-2023. The KHP allows for exclusive mechanical harvest within Administrative Kelp Bed 26 via a lease as well as harvest from administrative kelp beds 18-21, 23, 25, and 28-32 between Ventura and Point Conception (Exhibit A1). The current KHP expires on April 17, 2023.

In accordance with regulation, in January 2023 the Cultured Abalone Farm LLC submitted an updated KHP for the five-year period 2023-2028 (exhibits A2 and A3). Staff transmitted the KHP to the Department for its evaluation. Potential Commission action will be scheduled for a

STAFF SUMMARY FOR FEBRUARY 8-9, 2023

future meeting after the Department has completed its evaluation and submitted its recommendation to the Commission.

Today's proposed action is to approve a six-month extension to the current 2018-2023 KHP to allow continued kelp harvest operations until final Commission action occurs on the updated KHP, potentially at the April 19-20 Commission meeting.

(B) Lease Renewal

Fish and Game Code Section 6700 authorizes the Commission to lease to a person the exclusive privilege to harvest kelp in any designated kelp bed. The Commission awarded a lease to the Cultured Abalone Farm LLC on May 26, 2011 for Administrative Kelp Bed 26, subject to renewal every five years. The current lease (Exhibit B1) expires on April 3, 2023.

In November 2022, the Commission received a notice of intent from The Cultured Abalone Farm LLC to renew its lease of Administrative Kelp Bed 26 to harvest kelp as feed for its on-shore abalone aquaculture (Exhibit B2).

Today's proposed action, to approve a six-month extension of the current lease, affords the opportunity to align the terms of the updated KHP with the new five-year lease, without a lapse in lease terms.

Significant Public Comments (N/A)

Recommendation

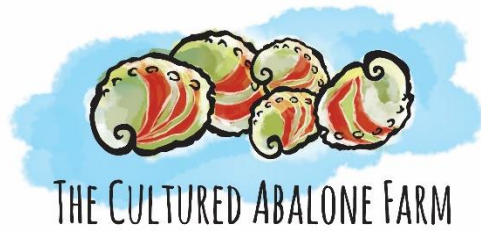
Commission staff: Under a motion to approve the consent calendar, approve a six-month extension for The Cultured Abalone Farm LLC's five-year kelp harvest plan (2018-2023), and approve a six-month extension for The Cultured Abalone Farm LLC's existing lease for Administrative Kelp Bed 26.

Exhibits

- A1. [The Cultured Abalone Farm, LLC's current KHP \(2018-2023\)](#)
- A2. [Email from Doug Bush, Managing Member, The Cultured Abalone Farm LLC, received January 23, 2023](#)
- A3. [Proposed 2023-2028 KHP from The Cultured Abalone Farm, LLC, received January 23, 2023](#)
- B1. [Kelp harvest lease for Administrative Kelp Bed 26 \(2018-2023\)](#)
- B2. [Email from Doug Bush, Managing Member, The Cultured Abalone Farm LLC, received November 3, 2022](#)

Motion

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for agenda items 21 and 22 on the consent calendar.



Updated January 2018

This plan is submitted by The Cultured Abalone Farm, LLC to the CA Fish and Game Commission for the purpose of articulating the manner and extent of projected kelp harvesting activities for the five year period 2018-2023.

Background

The Cultured Abalone Farm LLC (TCAF) is a licensed kelp harvester. TCAF owns and operates Ocean Harvest, a 50' workboat customized for the task of mechanical harvest of kelp, *Macrocystis pyrifera*, from coastal kelp beds. TCAF holds a kelp bed lease for bed 26 which is serviced from the Santa Barbara harbor. Additionally, TCAF harvests from Fish and Wildlife administrative "open" beds according to need, weather, and kelp canopy conditions.

We internally characterize open beds in two categories; primary open beds and contingency open beds. Primary beds are near to the harbor and have reliable, established canopies which enable us to spread out our harvesting effort over a large area to minimize repetitive cutting. Primary open beds serviced from the Santa Barbara harbor include beds 28, 25, 23, and 21 (which encompass an operating radius from Naples to Summerland). Contingency open beds are also established kelp beds but are further from the harbor and represent a higher cost and effort to harvest, therefore these beds are utilized conditionally, such as after canopy loss due to storm activity as occurred in March 2014. Contingency open beds serviced by Santa Barbara harbor include beds between Point Conception and Naples (29, 30, 31, 32) and beds between Summerland and Ventura (20, 19, and 18).

Harvest Plan Structure

Our proposed harvest plan will consist of the following sections: universal components describing details which are descriptive for all harvesting locations such as vessel details and landing methodology, and individual bed-specific components, which detail specific projected harvesting and management details for leased bed 26, primary open beds, and contingency open beds.

Universal Components

For all kelp harvesting activities undertaken by TCAF, irrespective of bed, the following details are universally described:

1. Harvester Name and Contact. The Cultured Abalone Farm, LLC / 9580 Dos Pueblos Canyon Rd / Goleta CA 93117 / 805-685-1956 / culturedabalone.com
2. Harvesting Vessel. “Ocean Harvest” is a 50’ LOA steel hulled modified landing craft with permanently installed equipment for the dedicated purpose of harvesting kelp. Tonnage is 23 GRT/18 NRT. Fuel capacity is 2x400gal tanks. US Coast Guard registration number is 1189178. CA Fish and Wildlife commercial vessel registration number is 06640.
3. Harvesting Operation. “Ocean Harvest” operates a purpose built hydraulic cutting system. Using modified agricultural equipment, kelp is cut by articulating blades that operate approximately 18 inches submerged below the surface while the vessel is piloted at very low speeds along the margin of kelp canopy. Cut kelp is lifted from the sea surface by a rotating stainless belt and deposited into a net bag with approximate capacity of one ton wet kelp. When full, the net bag is pursed and knotted to close the opening, then moved aft on the vessel into the cargo hold. This process is repeated until the required amount of kelp is on board. This operation is done at slow speeds and generally in calm conditions. Operation of vessel and harvesting equipment requires one captain and one crew.
4. Projected Total Annual Harvest Requirement. Approximately 1800-1900 wet tons of kelp per year, ***harvested variously from a combination of the beds described below on basis of conditions and availability.***
5. Landing Method. Net bags are weighed and recorded during unloading using a high capacity analog dial scale (AAA Weigh, Oxnard CA). Weights are recorded at time of landing. Total tonnage is recorded by date and location of harvest and provided to CA Fish and Wildlife along with royalty payments at month end in accordance with CA Dept of Fish and Wildlife Kelp Harvesting Regulations.
6. Transport to Facility. Net bags are transported directly to TCAF facility using a class-C commercial truck. Lifting equipment is utilized at the public commercial pier at Santa Barbara Harbor for loading.
7. Repetitive Harvest Avoidance. Repetitive harvest is avoided using a combination of visual spotting and overlays of prior harvesting tracks on GPS/chartplotting equipment. Kelp canopy can consist of stalks “laying” along the sea surface. By choosing to cut on calm days with moderate tides, and by cutting from the margin of the bed, kelp plants are not pulled from the base/holdfast. Instead, impact on kelp plants is limited to cutting sections from the slack canopy on the sea surface.
8. Bull Kelp (Nereocystis) Avoidance. Bull kelp is generally avoided visually. Areas of kelp canopy with high amounts (greater than 10%) of bull kelp are avoided and tagged for future reference using GPS/chartplotter equipment. Bull kelp is not the preferred species of kelp for abalone forage and can be problematic for harvesting equipment.
9. Sea Otter Rafting Avoidance. Sea otter rafting groups are visually avoided. The kelp harvesting vessel operates at a very slow speed.
10. MPA Compliance. Vessel GPS/chartplotter equipment is loaded with points indicating boundaries of MPAs. Harvest records are maintained for MPAs which permit kelp harvest (bed 28). No harvesting is done in no-take reserves.

Individual Bed-Specific Components

The following details are specific to the location of kelp harvesting.

Leased Bed 26:

1. Bed Description. Bed 26 is from Hope Ranch Creek to Goleta Point, the “More Mesa” bed. This is one of the primary harvest locations due to proximity to the Santa Barbara harbor and its protection from ocean conditions.
2. Administrative Bed Status. Leased by TCAF LLC
3. Intended Use of Harvested Kelp. Abalone forage
4. Projected Monthly Tonnage. Up to 140 tons per month
5. Projected Annual Tonnage. Up to 1680 tons per year
6. Projected 5-year Tonnage. Up to 8400 tons

Primary Open Beds:

1. Bed Descriptions. The four primary open beds are bed 28 (Coal Oil Point to Gato Creek, the “Naples” bed), 25 (Rogue Creek to Hope Ranch Creek, the “Hope Ranch” bed), 23 (SB Breakwater to Lighthouse, the “Ledbetter” bed), and 21 (Loon Point to Montecito, the “Summerland” bed). These are primary harvest beds due to their proximity to the Santa Barbara harbor. They are harvested variously depending on kelp and ocean conditions, as needed, in order to maximize kelp quality and minimize harvesting stress on a single bed. Each bed has tradeoff qualities; for example Naples bed is more exposed and further away but can provide harvestable kelp conditions different from Summerland bed, which is closer and more sheltered.
2. Administrative Bed Status. All beds described here are currently listed as “open.”
3. Intended Use of Harvested Kelp. Abalone forage and 3rd party harvesting. TCAF occasionally receives requests to harvest kelp for a group or individual. This harvesting is done only from “open” beds and only during periods of overall kelp abundance, for example during high growth months.
4. Projected Monthly Tonnage. Bed 21: Up to 30 tons/month, Bed 23: Up to 10 tons/month, Bed 25: Up to 20 tons/month, Bed 28: Up to 30 tons/month
5. Projected Annual Tonnage. Bed 21: Up to 360 tons/year, Bed 23: Up to 120 tons/year, Bed 25: Up to 240 tons/year, Bed 28: Up to 360 tons/year
6. Projected 5-year Tonnage. Bed 21: Up to 1800 tons, Bed 23: Up to 600 tons, Bed 25: Up to 1200 tons, Bed 28: Up to 1800 tons

Contingency Open Beds:

1. Bed Description. The seven contingency open beds are bed 32 (Point Conception to Alegria, the “Cojo” bed), 31 (Alegria to Molino, the “Gaviota” bed), 30 (Molino to Refugio, the “Tajiguas” bed), 29 (Refugio to Gato Creek, the “El Capitan” bed), 20 (Loon Point to Rincon Point, the “Carpinteria” bed), 19 (Rincon Point to Pitas, the “Pitas” bed), and 18 (Pitas to Ventura, the

“Emma Wood” bed). Any portions of these beds that lie within no-take MPAs, such as the western portion of Bed 32 within the Cojo SMR, are not utilized. These are contingency beds, meaning that in a “normal” year these beds would not be utilized or harvested from, primarily due to the distance from Santa Barbara harbor and the resultant cost of operation. During contingency circumstances, such as localized removal of kelp canopy by storm or other ocean condition activity, these beds would be harvested.

2. Administrative Bed Status. All beds described here are currently listed as “open.”
3. Intended Use of Harvested Kelp. Abalone forage (no 3rd party harvesting performed during contingency harvest conditions).
4. Projected Monthly Tonnage. Generally zero. When utilized, Bed 32: Up to 40 tons per month, Bed 31: Up to 10 tons per month, Bed 30: Up to 30 tons per month, Bed 29: Up to 20 tons per month, Bed 20: Up to 30 tons per month, Bed 19: Up to 30 tons per month, Bed 18: Up to 30 tons per month.
5. Projected Annual Tonnage. Generally zero. When utilized, Bed 32: Up to 160 tons per year, Bed 31: Up to 40 tons per year, Bed 30: Up to 120 tons per year, Bed 29: Up to 80 tons per year, Bed 20: Up to 120 tons per year, Bed 19: Up to 120 tons per year, Bed 18: Up to 120 tons per year.
6. Projected 5-year Tonnage. Generally zero. When utilized, Bed 32: Up to 320 tons, Bed 32: Up to 80 tons, Bed 30: Up to 240 tons, Bed 29: Up to 160 tons, Bed 20: Up to 240 tons, Bed 19: Up to 240 tons, Bed 18: Up to 240 tons.

Summary

1. TCAF LLC operates a 50’ LOA mechanical harvesting vessel, “Ocean Harvest,” to harvest kelp from California administrative kelp beds in compliance with Department of Fish and Wildlife kelp harvesting regulations.
2. Kelp harvesting occurs in both leased and open beds. All beds utilized are described in this document as either a primary bed or contingency bed, and are prioritized in their use by operation cost, kelp quality, and maintenance of kelp bed vitality.
3. Any 3rd party kelp harvesting occurs only in open beds and only under normal conditions of kelp productivity. No 3rd party kelp is harvested during contingency conditions.

Rogers, Kimberly-Contractor@fgc

From: Doug Bush <[REDACTED]>
Sent: Monday, January 23, 2023 5:20 PM
To: Ashcraft, Susan@FGC; FGC
Cc: Lovell, Randy@Wildlife; Rebecca Flores Miller
Subject: KHP
Attachments: Addendum to KHP - Commercial Vessel Registration Jan 2023.pdf; Kelp Harvesting Plan Updated for Apr 2023 renewal TCAF LLC.pdf

WARNING: This message is from an external source. Verify the sender and exercise caution when clicking links or opening attachments.

Hi Susan/FGC;

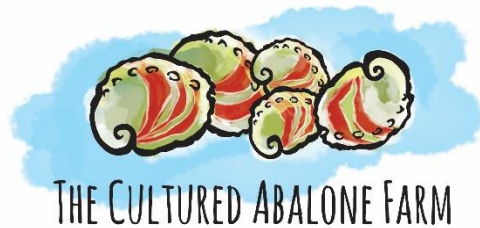
Please find attached our proposed Kelp Harvest Plan for inclusion in the upcoming binder, and a separate addendum to the KHP which represents a small regulatory "blind spot" which is relevant to the KHP and kelp harvesting regs that we think could/should be an easy remedy.

Happy to discuss if desired.

Thanks as always for your time and support.

douglas bush
managing member/gm
the cultured abalone farm, llc
c. [REDACTED]





January 23, 2023

Updated for April 2023 renewal

This Kelp Harvest Plan is submitted by The Cultured Abalone Farm, LLC to the CA Fish and Game Commission for the purpose of articulating the manner and extent of projected kelp harvesting activities for the five year period 2023-2028 and is concurrent with the renewal term for the lease of Bed L-26.

Background

The Cultured Abalone Farm LLC (TCAF) is a licensed kelp harvester. TCAF owns and operates Ocean Harvest, a 50' workboat customized for the task of mechanical harvest of kelp, *Macrocystis pyrifera*, from coastal kelp beds. TCAF harvests kelp from leased bed 26 and from administrative "open" beds according to need, weather, and kelp canopy conditions.

Santa Barbara Harbor is the home port for the F/V Ocean Harvest. As such the general radius of kelp harvesting occurs between Ventura and Point Conception, or administrative kelp beds 18-32, exclusive of closed beds and no-take State Marine Reserve areas.

General Harvest Plan Details

1. Harvester Name and Contact. The Cultured Abalone Farm, LLC / 9580 Dos Pueblos Canyon Rd / Goleta CA 93117 / 805-685-1956 / culturedabalone.com
2. Harvesting Vessel. "Ocean Harvest" is a 50' LOA steel hulled modified landing craft with permanently installed equipment for the dedicated purpose of harvesting kelp. Tonnage is 23 GRT/18 NRT. Fuel capacity is 2x400gal tanks. US Coast Guard registration number is 1189178. CA Fish and Wildlife commercial vessel registration number is 06640^{SEE ADDENDUM}.
3. Harvesting Operation. "Ocean Harvest" operates a purpose built hydraulic cutting system. Using modified agricultural equipment, kelp is cut by articulating blades that operate approximately 18 inches submerged below the surface while the vessel is piloted at very low speeds along the margin of kelp canopy. Cut kelp is lifted from the sea surface by a rotating stainless flat wire conveyor belt and deposited into a net bag with approximate capacity of three quarter ton wet kelp. When full, the net bag is pursed and knotted to close the opening, then moved aft on the vessel into the cargo hold using hydraulic on board crane, and a new empty

net bag is fitted to the frame. This process is repeated until the required amount of kelp is on board. This operation is done at slow speeds and generally in calm conditions. Operation of vessel and harvesting equipment requires one captain and one crew.

4. Projected Total Annual Harvest Requirement. Up to 3900 wet tons of kelp per year, harvested variously from a combination of the beds described below on basis of conditions and availability. This number is based on the maximum potential harvest capacity of the vessel (15 tons per trip) and a maximum potential number of harvesting runs per year (5 trips per week x 52 weeks). Any increase above this amount would require a fundamental change to our cutting operation that would require an update to our harvest plan and FGC approval.
5. Landing Method. Net bags are weighed and recorded during unloading using a high capacity digital hanging scale. Weights are recorded at time of landing. Total tonnage is recorded by date and location of harvest and provided to CA Fish and Wildlife along with royalty payments at month end in accordance with CA Dept of Fish and Wildlife Kelp Harvesting Regulations.
6. Transport to Facility. Net bags are transported directly to TCAF facility using a class-C commercial truck. Lifting equipment is utilized at the public commercial pier at Santa Barbara Harbor for loading.
7. Repetitive Harvest Avoidance. Repetitive harvest is avoided using a combination of visual spotting and overlays of prior harvesting tracks on GPS/chartplotting equipment. Kelp canopy can consist of stalks “laying” along the sea surface. By choosing to cut on calm days with moderate tides, and by cutting from the margin of the bed, kelp plants are not pulled from the base/holdfast. Instead, impact on kelp plants is limited to cutting sections from the slack canopy on the sea surface.
8. Bull Kelp (Nereocystis) Avoidance. Bull kelp is generally avoided visually. Areas of kelp canopy with high amounts (greater than 10%) of bull kelp are avoided and tagged for future reference using GPS/chartplotter equipment. Bull kelp has a thick durable stipe and can be problematic for harvesting equipment and is therefore undesirable to our harvest. Bull kelp is generally very rare south of Point Conception and is unusual in our normal area of operation.
9. Sea Otter Rafting Avoidance. Sea otter rafting groups are visually avoided. The kelp harvesting vessel operates at a very slow speed. Sea otters are rarely encountered in the area of operation.
10. MPA Compliance. Vessel GPS/chartplotter equipment is loaded with points indicating boundaries of MPAs. Harvest records are maintained for MPAs which permit kelp harvest (bed 28). No harvesting is done in no-take reserves. Kelp harvested from within the Naples SMCA, which specifies mechanical kelp harvesting as an allowed use, is specifically annotated in reporting.

Bed-Specific Productivity and Harvest Projections

Kelp harvesting is performed in areas where canopy is robust, according to conditions and distance from harbor. Fuel is a significant operating expense and generally it is preferred to harvest from beds which are closer than beds which require extended travel. In the five years 2017 to 2021 TCAF LLC has harvested from beds 20, 23, 25, 26 (leased), 28, and 31/32, and did not harvest any kelp from open beds

18, 19, 21, 29, or 30. Future kelp availability may be starkly different than the previous 5 years and geographic harvest patterns should be viewed as a regional strategy. Kelp canopy is highly variable seasonally and inter-annually. Response to storm/swell conditions or to short and medium term oceanographic conditions will influence kelp availability. This in turn results in year over year variability in where our harvesting occurs. The following projections are meant to reflect an adaptive strategic approach to kelp harvesting within the operating radius of Santa Barbara harbor in order to maximize efficiency and long term stewardship of the kelp resource.

The March 2001 CA Department of Fish and Wildlife CEQA document “Giant and Bull Kelp Commercial and Sportfishing Regulations” is a comprehensive document evaluating giant and bull kelp harvest. In terms of describing biomass per unit area, that document publishes a Southern California giant kelp canopy biomass range of 13.36 to 97.93 tons per acre. Additionally, that standing biomass is constantly growing and replacing itself; the document publishes an annual turnover factor of 6.6 times per year (Section 3.2.6) to describe annual productivity. Using these estimates of quantitative biomass and applying them on a per bed basis to the bed area (in square miles) figures published in the Laws and Regulations Governing the Harvest of Kelp, the following estimates of low (warm, low nutrient turnover) and high (cool, high nutrient turnover) annual productivity can be applied to each of the kelp beds within the TCAF kelp harvesting operating radius:

Standing biomass and annual productivity ranges for giant kelp within operating radius of Santa Barbara Harbor.						
Bed	Area (sq miles)	Area (acres)	Standing Biomass (low) acres*13.36 tons/ac	Standing Biomass (high) acres*97.93 tons/acre	Annual productivity (low) tons*6.6	Annual productivity (high) tons*6.6
L-18	0.14	89.6	1197	8775	7901	57912
L-19	0.05	32	428	3134	2822	20683
L-20	0.24	153.6	2052	15042	13544	99278
L-21	0.19	121.6	1625	11908	10722	78595
L-23	0.1	64	855	6268	5643	41366
L-25	0.18	115.2	1539	11282	10158	74458
L-26	0.6	384	5130	37605	33860	248194
L-28	0.6	384	5130	37605	33860	248194
L-29	0.17	108.8	1454	10655	9594	70322
L-30	0.39	249.6	3335	24443	22009	161326
L-31	0.16	102.4	1368	10028	9029	66185
Total	2.82	1804.8	24112	176744	159140	1166511
L-32*	2.76	1766.4	23599	172984	155754	1141691
*L-32 biomass is partially encompassed by a no take SMR. Given the additional working distance from harbor, this bed's biomass is not included in the total but is included for regional biomass reference.						

The theoretical maximum harvest capacity of the F/V Ocean Harvest, described above as a function of vessel capacity at 3900 tons per year, would therefore represent 2.45% of the regional annual “low range” productivity total of 159,140 tons, and a 0.33% of the “high range” annual productivity.

This is exclusive of kelp canopy which is protected by no-take SMRs- bed L-27 which is wholly located inside the Isla Vista SMR is not included in that biomass total, and the biomass of bed L-32, a portion of which is located in the Point Conception SMR, is considered separately and not part of the regional biomass total given its distance from SB Harbor. As is evident in the table, the biomass and productivity

of bed L-32 is approximately equal to all other beds in the region combined, and it represents an enormous reservoir and buffer of resource protection. For the purpose of the KHP, TCAF would only harvest from bed L32 in exceptional circumstances- it is not part of our general operational plan.

TCAF proposes that for any given administrative kelp bed within the operating region, no more than 50% of the “low range” productivity be harvested within a single year. For most beds, such L-28 for example, this is operationally true by default, 50% of the annual low range productivity (33,860 tons) is 16,930 tons, which is 4.3x the total theoretical maximum our harvesting vessel could possibly harvest. But for smaller beds such as L-19 or for future considerations in scenarios where other entities may wish to operate in the SB Channel, this limit would mitigate possible intensification stresses.

For the purposes of this KHP proposal, even the theoretical maximum harvest of the FV Ocean Harvest is such a small amount of the overall regional productivity, that no single administrative bed should approach that limit.

Annual harvest of kelp would be allocated between leased bed L-26 and all other harvestable beds. Actual harvest will be reported on an ongoing monthly basis with all data per the regulations governing the commercial harvest of kelp.

Leased Bed L-26:

1. Bed Description. Bed 26 is from Hope Ranch Creek to Goleta Point, the “More Mesa” bed. This is one of the primary harvest locations due to proximity to the Santa Barbara harbor and its protection from ocean conditions. 50% of the low range annual productivity for this bed is 16,930 tons.
2. Administrative Bed Status. Leased by TCAF LLC, 5 year term renewal date April 2023
3. Intended Use of Harvested Kelp. Abalone forage and direct sale
4. Projected Monthly Tonnage. Up to/no more than 300 tons per month
5. Projected Annual Tonnage. Up to/no more than 3900 tons per year
6. Projected 5-year Tonnage. Up to/no more than 19,500 tons in 5 years

Open Beds:

1. Bed Descriptions. The open beds in the TCAF operating radius of Santa Barbara Harbor are, from southeast to northwest: bed L-18 (Pitas to Ventura, the “Emma Wood” bed), bed L-19 (Rincon Point to Pitas, the “Pitas” bed), bed L-20 (Loon Point to Rincon Point, the “Carpinteria” bed), bed L-21 (Loon Point to Montecito, the “Summerland” bed), bed L-23 (SB Breakwater to Lighthouse, the “Ledbetter” bed), bed L-25 (Rogue Creek to Hope Ranch Creek, the “Hope Ranch” bed), bed L-28 (Coal Oil Point to Gato Creek, the “Naples” bed), bed L-29 (Refugio to Gato Creek, the “El Capitan” bed), bed L-30 (Molino to Refugio, the “Tajiguas” bed), bed L-31 (Alegria to Molino, the “Gaviota” bed), bed L-32 (Point Conception to Alegria, the “Cojo” bed). Any portions of these beds that lie within no-take MPAs, such as the western portion of Bed 32 within the Cojo SMR, are not utilized. Bed L-28 (“Naples”) has within its boundaries the Naples Reef State Marine Conservation Area which permits mechanical harvest of kelp so long as

specific records of SMCA harvested tonnage are kept. TCAF does not operate the kelp harvester in open ocean and therefore none of the Channel Island administrative kelp beds (100 series) are considered within the operating radius.

2. Administrative Bed Status. All beds described here are currently listed as “open” or “leasable.”
3. Intended Use of Harvested Kelp. Abalone forage and direct sale
4. Projected Monthly Tonnage. Up to/no more than 300 tons per month on aggregate for all identified open beds, and no more than the monthly total of 50% of low range annual productivity from any single bed
5. Projected Annual Tonnage. Up to/no more than 3900 tons per year on aggregate for all identified open beds, and no more than 50% of low range annual productivity from any single bed
6. Projected 5-year Tonnage. Up to/no more than 19,500 tons in 5 years on aggregate for all identified open beds, and no more than a five year total of 50% of low range annual productivity from any single bed

**LEASE GRANTING THE EXCLUSIVE
PRIVILEGE OF HARVESTING KELP AT KELP
BED NO. 26**

THIS LEASE GRANTING THE EXCLUSIVE PRIVILEGE OF HARVESTING KELP AT Bed No. 26 ("Lease") is made and entered into upon execution, by and between The Cultured Abalone Farm, LLC, ("Tenant") and the California Fish and Game Commission ("State") with reference to the following facts:

RECITALS

WHEREAS, Fish and Game Code Section 6700 authorizes State to lease to any person the exclusive privilege to harvest kelp in any designated kelp bed if it determines that such lease is in the public interest; and

WHEREAS, Tenant desires to lease Kelp Bed No. 26 to harvest kelp to provide feed for abalone aquaculture; and

WHEREAS, State desires to enter into a lease agreement for the exclusive privilege to harvest kelp in any designated kelp bed if it determines that such lease is in the public interest; and

WHEREAS, On May 26, 2011, State awarded a lease for Kelp Bed No. 26 to The Cultured Abalone, Inc.; and

WHEREAS, The Cultured Abalone Farm, LLC is the successor in interest to The Cultured Abalone, Inc.; and

WHEREAS, On August 6, 2014, State awarded the lease for Kelp Bed No. 26 to Tenant;

NOW THEREFORE, On Dec 7, 2017, State approved terms and conditions for the lease contained herein.

TERMS AND CONDITIONS

1. **LEASE.** State hereby grants to Tenant the exclusive privilege to harvest kelp in Kelp Bed No. 26 upon and subject to the terms and conditions of this Lease.

2. **DESCRIPTION.** This Lease covers those areas comprising approximately 0.60 square miles as described in Title 14, California Code of Regulations, Section 165.5(j) as Kelp Bed No. 26.

3. **TERM.** This Lease is for a term ("Term") commencing on the date last signed below (April 3, 2018) and ending five years after (on April 3, 2023), unless renewed or sooner terminated in accordance with its terms.

4. **MODIFICATION OR TERMINATION.** Fish and Game Code Section 6700 requires that any exclusive lease to harvest kelp, granted by State, must be in the public interest, as determined by State.

5. **ROYALTY.** In addition to any kelp harvesting license fee required, Tenant shall pay State a royalty rate of \$2.00/ton of wet kelp harvested from the leased area.

6. **ADVANCE PAYMENT.** On penalty of lease forfeiture, commencing January 1st of each year during the term of this lease, Tenant, on or before the date due, shall pay to State a nonrefundable advance payment of \$1,800.00, calculated by multiplying the royalty rate in Paragraph 5 herein times the 0.60 square miles of bed pursuant to Title 14, California Code of Regulations, Section 165.5(j) times 1,500, computed pursuant to Title 14, California Code of Regulations, Section 165.5(g). Kelp harvested from Kelp Bed No. 26 will be credited against this advance payment at the royalty rate payable under Paragraph 5, until the deposit has been depleted. Kelp harvested in any calendar year after January 1 of the year this Lease first was entered into, in excess of the amount covered by the advance deposit for that year shall be assessed at the end of each month at the basic royalty rate in Paragraph 5. Advance payments shall be delivered to California Department of Fish and Wildlife, Administrative Services Branch, 1416 Ninth Street, 12th Floor, Sacramento, California 95814 on or before January 15. Any surplus remaining from the annual advance payment shall be credited to the following annual advance payment. Payment shall be made to State in lawful money of the United States, provided that, if any payment made by a check, draft or money order is returned to State due to insufficient funds or otherwise, 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.

7. **RENEWAL.** If State determines Tenant has complied with the terms of the Lease, the Tenant shall have a prior right to renew the Lease on terms agreed upon with State. To preserve this prior right, Tenant must request to renew this Lease by written notice to State mailed at least 120 days and not more than 180 days prior to the expiration of the current term. If such notice is not timely given, or if Tenant is not in compliance with the terms of the existing Lease, the existing Lease, including any right to renew, shall terminate upon expiration of the then current term. State and Tenant agree that if, by the date the existing Lease is to expire, the terms of any renewal lease have not been agreed to, State may cease negotiations and declare this Lease terminated with no right to renewal. Notwithstanding the foregoing, State and Tenant, at any time during the term of this Lease, may negotiate and enter into a new lease on terms agreed upon between them. In no event shall Tenant's period of occupancy under the initial term of this Lease extend beyond 20 years. Similarly, the term of any renewal of this Lease shall not exceed 20 years.

8. **LATE PAYMENT.** Payment of advance payments are timely if received by State on or before January 15. Any advance payment not received by State by January 15, regardless of whether the due date falls on a Saturday, Sunday, or holiday, will be subject to a late penalty consisting of an administrative charge, calculated at the rate of ten percent (10%) of the amount of the late payment. The parties agree that the late charge represents a fair and reasonable estimate of the costs State will incur because of late payment. Acceptance of the late charge by State shall not constitute a waiver of Tenant's default for the overdue amount, nor prevent 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 advance payment not received by State within ninety (90) days of January 15 shall constitute a breach of Lease, giving rise to State's remedies as set forth herein.

Payments of royalty assessments due after exhaustion of the advance payment are due by the 10th day of the month following the assessment. At the end of each calendar year, Tenant shall be assessed a late payment fee of \$100 for each month that royalty payments due to the State are received after the 10th day of the month for which they are due. Failure of Tenant to submit royalty payments due to the State by the 10th day of the month for which they are due for more than three (3) months in any calendar year shall constitute a breach of Lease, giving rise to State's remedies as set forth herein.

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

9. HOLDOVER. If the Term in Paragraph 3 expires and the Lease has not been renewed pursuant to Paragraph 6, 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 Paragraphs 3 and 6. During this holdover tenancy, kelp harvest may continue and paid for at the bid royalty rate in accordance with Paragraph 5. It is expressly understood that a holdover tenancy does not create any right of renewal beyond that provided by Fish and Game Code Section 6704 as set forth in Paragraph 6, and that the only purpose of a holdover tenancy is to allow continuity of use of the property while 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 6702 and Title 14, California Code of Regulations, Section 165.5. 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. INCORPORATION BY REFERENCE. The provisions of Chapter 6 of Division 6 of the Fish and Game Code (commencing with Section 6650) and the regulations at Title 14, California Code of Regulations Sections 165 and 165.5, 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 provision(s) incorporated by reference in it, the incorporated provision(s) shall control.

11. INDEMNITY. (For purposes of this Paragraph, the term, "State", shall include the California Department of Fish and Wildlife as well as the California Fish and Game Commission). Tenant hereby waives all claims and recourse against 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 State, its officers, agents or employees. Tenant shall notify the California Department of Fish and Wildlife Kelp 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 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 State, its officers, agents or employees for which State is found liable by a court of competent jurisdiction.

Should 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 State to Tenant, the Tenant shall assume State's defense and represent 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 State, State may elect to represent itself, in which event, State shall bear its own litigation costs, expenses and attorney fees. Notwithstanding the foregoing, in the event State is required to represent itself because of a conflict of interest by counsel representing Tenant, then Tenant, upon demand by State, shall reimburse State for 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.

12. INSURANCE. Tenant shall obtain and maintain in full force and effect at all times during the Lease term a policy or policies of insurance, insuring Tenant, State and all other agencies of the State of California against any and all claims or liability for bodily injury, personal injury and property damage based upon or arising out of the use, occupancy, condition or maintenance of the leasehold. Each policy shall be written on an occurrence basis, and shall identify the Lease by its assigned number. The required insurance shall meet the following requirements:

- (a) Commercial General Liability: For general aggregate, product/completed operations, personal and advertising injury, \$1 million, with a combined single limit no less than \$1 million per occurrence.
- (b) Worker's Compensation and/or Employer's Liability: In a form and amount covering Tenant's full liability as required under federal and state law.
- (c) Pollution Liability: For vessels owned, hired, scheduled or non-owned with a combined single limit no less than \$1 million per occurrence.

Evidence of Insurance: The coverage provided by Tenant shall be primary and non-contributing, and shall not limit the liability of Tenant. Tenant shall furnish to State certificate(s) of insurance reflecting the foregoing. The certificate(s) of insurance shall:

- (a) Be furnished to State, and no such policy shall be cancelable or subject to reduction of coverage or other modification except after 30 days prior written notice to State.
- (b) Ensure State and all other agencies of 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 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. 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 State.

13. 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:

CALIFORNIA FISH AND GAME COMMISSION
P.O. Box 944209
Sacramento, CA 94244-2090
Telephone: (916) 653-4899

THE CULTURED ABALONE FARM, LLC
9580 Dos Pueblos Canyon Road
Goleta, CA 93117
Telephone: (805) 685-1956

DEPARTMENT OF GENERAL SERVICES
State Owned Leasing and Development
P. O. Box 989052
West Sacramento, CA 95798-9052
Phone: (916) 375-4025

Notices shall be deemed given upon delivery to the addressee. If a notice 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 in its address for notice purposes by giving written notice to the other party in the manner provided in this section.

14. 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, including any holdover tenancy.

The Lease area shall be continuously used by Tenant to conduct kelp harvest operations, in accordance with Title 14, California Code of Regulations, Sections 165 and 165.5, and all other laws and regulations. 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 State.

The possessory interest herein given to 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. 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 pursuant to the Government Code sections 7260 et seq., or any regulations implementing or interpreting such sections will be sought or provided in any form as a consequence of this tenancy.

15. CONTINGENCIES. By entering into this lease, the Tenant understands and agrees that the exclusive right to harvest kelp within the leased bed(s) may be subject to additional restrictions or limitations imposed by subsequent action of the Fish and Game Commission.

16. 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, disability, or any other class protected under State, Federal or local laws.

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 its obligations under this clause to labor organizations with which it has 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.

17. 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 Kelp Leases if the State determines that any of the following has occurred:

- (a) The Tenant has made false certification, or
- (b) Violated the certification by failing to carry out the requirements as noted above.

18. NO WARRANTY. This Lease is made without warranty of title, condition or fitness of Kelp Bed No. 26 for the Tenant's intended purpose or use.

19. COMPLIANCE. As a necessary condition for this Lease, Tenant must obtain and maintain all necessary permits and any other entitlements, including a valid Kelp Harvesting License. Tenant shall comply with all applicable federal, state and local laws, including laws relating to public health and safety, resource conservation and environmental protection.

For any leased bed(s) north of the County of Monterey, not more than 5 percent of the total weight of kelp harvested in any one day shall consist of bull kelp (*Nereocystis*).

20. REPORTS AND RECORDS. State may require Tenant to submit any periodic reports it deems necessary for the proper administration of State Kelp Lease at Kelp Bed No.26.

Tenant agrees that State, the California Department of Fish and Wildlife, and the California 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.

21. 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 State.

In the event 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 Paragraph, State shall have the right to annul this Lease without liability.

22. 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 State.

23. BREACH. The occurrence of any one of the following shall constitute a breach of this Lease by Tenant:

- (a) Failure of Tenant to make any annual advance payment within ninety (90) days of January 15;
- (b) Failure of Tenant to submit royalty payments due to the State by the 10th day of the month for which they are due for more than three (3) months in any calendar year;
- (c) Abandonment of the Lease area determined after State has followed the procedures set forth in Civil Code Section 1951.3.

Should a threat to public health or safety or to the environment be created or exist on the Lease area, State may declare an emergency event and, unless an alternative arrangement is preferable in 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, State shall provide immediate notice of such action by hand delivery or fax of its declaration to Tenant.

State may retain possession of the Lease area until the emergency event has been completely and adequately addressed to 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, State may terminate the Lease.

State shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of State's entry in the Lease area as provided herein, except damage resulting from the willful misconduct of State or its authorized representatives.

Any failure by Tenant to observe or perform another provision of this Lease where such failure continues for thirty (30) days after written notice thereof by 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 thirty (30) day period, Tenant shall not be deemed to be in breach if Tenant shall commence such cure within the thirty (30) 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 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 State specifically so states in the notice.

24. REMEDIES. In the event of breach by Tenant, 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 State at law or in equity.

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

Continued Performance: At 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, State may give Tenant a three-day notice to cure the breach or quit the Lease area. If Tenant fails to do either, State may bring a statutory proceeding in unlawful detainer to regain possession of the Lease area.

Any notice given by State pursuant to this Paragraph does not constitute a termination of this Lease unless expressly so declared by State in the notice. In the absence of written notice from State, no act by 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 State's initiative to protect 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, State has the right to recover from Tenant:

- (a) The worth, at the time of the award, of the unpaid royalties 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 royalties 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 royalties that Tenant proves could have reasonably been avoided;
- (c) The worth, at the time of the award, of the amount by which the unpaid royalties for the balance of the term after the time of the award exceeds the amount of the loss of royalties that Tenant proves could have been reasonably avoided; and
- (d) Any other amount necessary to compensate State for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease, and costs of clearing 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, State shall have the right to have a receiver appointed to collect royalties 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 State to terminate this Lease.

Right to Cure Tenant's Breach: At any time after Tenant commits a breach, State can cure the breach at Tenant's cost. If 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 State shall be due immediately from Tenant to 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 State until 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 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: 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 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 State takes possession of the Lease area by reason of any breach by Tenant.

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

Attorney's Fees and Costs: Tenant shall reimburse State on demand for all reasonable attorney fees and expenses incurred by State as a result of a breach under this Lease.

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 State specifying the alleged breach and the applicable Lease provision giving rise to the obligation. However, if the nature of State's obligation is such that more than thirty (30) days is required for its performance, then 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.

25. TERMINATION. In the event the Lease area becomes unsuitable for the commercial harvest of kelp, or in the event the Tenant becomes unable to continue operating the Lease for commercial kelp harvest for reasons beyond Tenant's ability to control, Tenant may terminate the Lease after thirty (30) days written notice to State.

Tenant may terminate the Lease for any other reason through a written request presented to and approved by 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's approval.

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

26. ASSIGNMENT AND SUBLEASES. Pursuant to Fish and Game Code Section 6708, 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 approval of State, subject to the conditions that it prescribes. At the election of State, any attempted assignment or subletting without the prior approval of State shall terminate this Lease.

27. RELEASE. Tenant shall within 90 days of the expiration or sooner termination of this Lease, execute, acknowledge and deliver to State in a form provided by State, a release of all rights under this Lease. Should Tenant fail or refuse to deliver such a release, a written notice by 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.

28. CONSTRUCTION. This Lease contains the entire agreement between the parties. This Lease shall be governed by and construed in accordance with the laws of the State of California. The Paragraph 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.

29. WAIVER AND CONSENT. Unless expressly acknowledged by 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. 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.

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

31. CHANGES. Nothing in this Lease may be waived, modified, amended, or discharged except by an instrument in writing signed by Tenant and State.

32. 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 State agree to replace such void or unenforceable provision with a valid and enforceable provision that will achieve, to the extent possible, the purpose original provision.

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 State nor the California Department of Fish and Wildlife shall have any liability arising from a closure of waters by the California Department of Fish and Wildlife

Director pursuant to Fish and Game Code Section 5654, where kelp harvesting operations are taking place in accordance with this Lease.

35. COUNTERPARTS. This Lease may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. The exchange of copies of this Lease and of signature pages by electronic mail in "portable document format" ("pdf") form or by any other electronic means shall constitute effective execution and delivery of this Lease, as long as the original signatures will follow in the mail.

36. APPROVAL. This Lease, and any renewal of it, is subject to approval by the State of California, Department of General Services.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE

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

STATE OF CALIFORNIA:

CALIFORNIA FISH AND GAME COMMISSION

By: 
VALERIE TERMINI
Executive Director

Date: 4/3/18

TENANT:


THE CULTURED ABALONE FARM, LLC

By: 
DOUGLAS BUSH
LLC Managing Member

Date: 03.19.18

CONSENT TO LEASE AND APPROVES OF TERMS:

DIRECTOR OF CALIFORNIA DEPARTMENT
OF GENERAL SERVICES

By: 
TONY PSIHOPAIDAS, Manager
State Owned Leasing & Development

Date: 4/17/18

Notice of intent to renew: Kelp Bed L-26 lease

Doug Bush [REDACTED]

Thu 11/03/2022 10:23 AM

To: FGC <FGC@fgc.ca.gov>

Cc: Flores Miller, Rebecca [REDACTED] Ashcraft, Susan [REDACTED]

[REDACTED] Lovell, Randy [REDACTED]

WARNING: This message is from an external source. Verify the sender and exercise caution when clicking links or opening attachments.

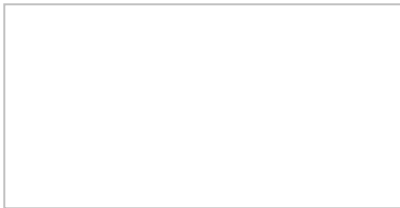
Please find attached our notice of intent to renew the lease of kelp bed L-26.

Hard copies have been mailed to CA FGC and to DGS.

Confirmation of receipt is requested.

douglas bush
managing member/gm
the cultured abalone farm, llc

[REDACTED]





November 3, 2022

California Fish and Game Commission
PO Box 944209
Sacramento CA 94244

Department of General Services
State Owned Leasing and Development
PO Box 989052
West Sacramento CA 95798

RE: Notice of intent to renew lease L-2724 (Lease of kelp bed L-26)

The Cultured Abalone Farm LLC (TCAF) provides timely request to exercise the right to renew the lease of kelp bed L-26 (Lease number L-2724) for a new 5-year term. TCAF is in compliance with the terms of the existing lease.

Per Section 7 of the current lease ("Renewal"), TCAF requests a determination of compliance by the State and a discussion of any terms required for renewal, including the required Fish and Game Commission approval of the Kelp Harvesting Plan (KHP), to be completed in a timely manner.

Signed
Douglas Bush, LLC Managing Member