

DBOC SUP EIS
c/o Superintendent
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, CA 94956
By internet: <http://parkplanning.nps.gov/pore> - NPS Planning,
Environment and Public Comment



November 22, 2010

Re: Scope of EIS – Issuance of Special Use Permit for DBOC within Drakes Estero

Dear Superintendent:

Marin Conservation League (MCL) appreciates the opportunity to submit the following comments for consideration in the scope of the subject EIS.

Marin Conservation League’s Interest in the EIS

MCL has a long history of promoting and supporting the establishment and management of the Point Reyes National Seashore (PRNS). One of the first actions of the League, founded in 1934, was acquisition of Drakes Beach and adjoining ranchland for public use. MCL first encouraged a National Park concept encompassing the Point Reyes Peninsula in the late 1950s, participated in promoting its authorization in 1962, contributed funds and volunteer effort during the “Save Our Seashore” campaign of 1969, collaborated with other non-profits and individuals to study which lands and waters should be designated “wilderness” as defined by the 1964 Wilderness Act, and testified jointly with others at legislative hearings to gain passage of the Point Reyes Wilderness Act of 1976. Certain shorelands and waters of Drakes Estero were designated as “potential wilderness,” to become “wilderness” on cessation of the existing non-conforming commercial oyster operation, assumed at that time to be 2012. MCL is concerned that the current special use permit, if approved, would defer that re-designation to 2022.

Legal and Policy Background

The Office of the Solicitor, Department of the Interior, in a letter to the Superintendent of PRNS on February 26, 2004, confirmed the following:

“ ‘Potential wilderness’ is an area which contains ‘lands that are surrounded by or adjacent to lands with the wilderness designation but that do not themselves qualify for immediate designation due to temporary, non-conforming, or incompatible conditions.’ (National Park Service Management Policies 2001, Section 6.2.2.1). This designation imposes land management obligations on NPS in that NPS’s 2001 Management policies direct that the Park seek to remove the non-conforming conditions that preclude wilderness designation.”

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The Park Service is mandated by the (1964) Wilderness Act, the Point Reyes Wilderness Act and its Management Policies to convert potential wilderness to wilderness as soon as the non-conforming use can be eliminated. The non-conforming use in 1976 was Johnson Oyster Company. The company had sold five acres of land to the Park Service in 1972 and received a Reservation (JOC) of Right of Use to continue to operate an oyster farm for 40 years— i.e., until November 30, 2012. That date for cessation of the RUO was clearly understood when the current operator purchased the oyster operation in 2007 and renamed it the Drakes Bay Oyster Company (DBOC). The NPS does not have the authority to grant DBOC a special use permit to continue its operation when the RUO expires in 2012. Senator Dianne Feinstein sponsored Section 124 of Public Law 111-88 (2009) which granted discretionary authority to the Secretary of the Interior to issue a special use permit for ten years. This authority does not alter the potential wilderness designation of Drakes Estero. If the Special Use Permit for a commercial harvesting and processing of shellfish at PRNS is granted, it will extend the non-conforming use. As a commercial use the shellfish operation does not meet the requirements of the Wilderness Act.

It is within the legal and policy framework, briefly summarized above, and the assumptions that flow from it, that MCL comments on the scope of this EIS. This framework helps to explain our suggestions for the Purpose and Needs Statement for the EIS

Proposed Action:

The proposed action that is the subject of this EIS is the request for issuance of a special use permit for a period of 10 years by Drakes Bay Oyster Company (DBOC) for shellfish operations at Point Reyes National Seashore. The permit may be authorized at the discretion of the Secretary of the Interior and is subject to the National Environmental Policy Act (NEPA). If DBOC is granted a permit to operate for ten years beyond the termination of its RUO, the Park Service's Management Policies still require the Park Service to manage the area as potential wilderness even though some activities detract from its wilderness character.

Purpose and Need:

The purpose and need section is in many ways the most important chapter of an environmental impact statement (EIS) in that it defines both the scope of analysis and the range of alternatives. Unlike many EISs, which concern the expenditure of public or private funds for a defined project, this EIS addresses the special permitting of an activity (harvesting of oysters) as a non-conforming commercial operation within the context of wilderness and potential wilderness in the Park.

Purpose: Point Reyes National Seashore is required by the Organic Act (16 USC 1-4) to protect and preserve unimpaired the resources and values of the National Park System, while providing for public use and enjoyment. Management of the Estero is further subject to the mandate of the Wilderness Act, which is to preserve wilderness in its

natural condition. The Act stresses the importance of wilderness areas as places for the public to enjoy, but at the same time restricts their use in any way that would impair their future as wilderness (emphasis added). The 2001 Management Plan for PRNS provides more detailed policies and implementation for the wilderness areas in the Park, consistent with that mandate.

The purposes of “the proposed action” can be broadly stated in two project objectives listed on Page 2 of the October 8, 2010 Announcement of the EIS:

“Manage natural and cultural resources to support their maximum protection, restoration, and preservation; and

Manage wilderness and potential wilderness areas, and the activities and resources within them, to preserve the character and qualities for which they were designated.”

Need: Need, according to the NPS, is a discussion of conditions that (may) need to be changed, problems that need to be remedied, decisions that need to be made, and policies or mandates that need to be implemented at this time. The existing commercial oyster operation has been the object of extensive public controversy, even predating the transfer of Johnson Oyster Company (JOC) to DBOC in 2007. The controversy centers primarily in claims and counter claims concerning the compatibility of the oyster operation with wilderness and its impacts on wilderness values, as defined in the Wilderness Act. Does the oyster operation detract from the wilderness qualities of the Estero? The need for the project is to determine the scientific (e.g., physical and ecological, including estuarine and marine resources), cultural, visual and sound aesthetics, social, economic, legal/policy, and other factors as they relate to protecting the wilderness qualities of the Estero. Will an additional ten years of oyster harvesting in the Estero damage, compromise, or enhance these wilderness values?

The third objective listed on the announcement should be added as a need in the EIS:

“Engage a broad spectrum of the public and relevant agencies in the NEPA process.”

Alternatives:

The project purpose and need also drive the process for determining a reasonable range of alternatives and identifying the environmentally superior alternative. The Council on Environmental Quality (CEQ) regulations require the EIS to address the “no-action” alternative.

1. No Action Alternative. The permit is not granted and DBOC terminates on November 30, 2012. Under this alternative, we assume that facilities, including oyster racks, processing and sales facilities, would be removed, and the area restored to some predetermined baseline condition.
2. Project as Proposed (i.e., Special Use Permit is granted). DBOC continues to harvest oysters, subject to terms of RUO and policies of current PRNS Management Plan.

3. Project as Proposed sub-alternatives:
 - Reduce the size of the operation (scope to be determined);
 - Adjust permit conditions to minimize damage from the activities of oyster culturists and/or incompatibility with natural resources in Estero (Adaptive management?)
4. Project or No Action sub- alternative:
 - Adjust permit conditions that manage and control other human disturbances, such as kayaking or hiking.

Wilderness:

As the National Research Council (NRC) report on Shellfish Mariculture in Drakes Estero (2009) states, "Drakes Estero is not a pristine coastal lagoon. . . the estero's ecosystem reflects many influences of human populations both past and present." The report cites the functional extinction of the native Olympia oyster (*Ostrea lurida*) population as the ecologically most significant modification. This assertion, which is a consistent and undocumented theme throughout the report, has been challenged by NPS (Dennis, J.G., June 16, 2009). The estero has been influenced by other human activities as well as by the passive introduction of non-native species, such as the tunicate *Didemnum vexillum*. No one disagrees that some of these influences would continue even if the oyster farm were closed and equipment removed. Wilderness is not an absolute, measurable state.

The people who came together to establish the Wilderness Act in 1964 were responding to an expanding national consciousness of the need to preserve resources for the benefit of present and future generations. Aldo Leopold, in *Sand County Almanac* (1949), found values of wilderness as reservoirs of natural biological diversity of scientific value, as life support systems, as areas of historic and cultural value, as areas offering aesthetic and educational experience of nature in a natural form. These values are not inconsistent with an area that has been touched by human influences. To the extent possible, however, wilderness also belongs in an ecological/geological timeframe that goes far beyond the limited term of human generations and immediate human demands.

For purposes of this EIS, the most appropriate definitions of wilderness are those found in the Wilderness Act: where "man himself is a visitor;" "which is protected and managed so as to preserve its natural conditions;" where "the imprint of man's work (is) substantially unnoticeable;" "has outstanding opportunities for solitude;" "is of sufficient size as to make practicable its preservation and use in an unimpaired condition;" and "may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value."

These are the overarching criteria that should direct the analysis of the Proposed Action and the No Project Alternatives: Which alternative most successfully fulfills the terms of the Wilderness Act? If the special use permit is granted, how can the oyster

operation be modified (mitigated) to be as consistent as possible with these terms for another 10 years?

Marine and Estuarine Resources

At least five issues identified in the report stand out as needing further scientific study and/or independent review and verification of existing data in the EIS. In brief:

1. The role and ecological significance of the “original” native Olympia oyster in Drakes Estero. Many of the predictions and conclusions of the NRC report (2009) rest on a presumed past abundance of the native Olympia oyster. The cultivated oyster (*Cassostrea gigas*) is characterized as a beneficial “return” of oysters to the ecosystem, restoring historic baseline functions such as filtering capacity and structural habitat (oysters as “ecosystem engineers”) and maintaining beneficial biogeochemical cycling, subject to tidal flushing and exchange with the ocean (the tidal dynamics of Drakes Estero are not analyzed in the NRC report). This undocumented assertion which is presented as science must be resolved in the EIS. To ascribe false benefits to the farming of non-native oysters would seriously distort the analysis.
2. Effects of culturists activities on eelgrass in the Estero. The science is also unclear with regard to the viability of eelgrass habitat. Roughly 8 percent of the eelgrass has been impacted by mariculture activities, although the NRC report claims that eelgrass habitat has doubled from 1991 to 2007. Again, does oyster culture actually enhance eelgrass productivity through local fertilization, or is this an unsubstantiated inference?
3. Effects of mariculture on harbor seals. This is the most thoroughly studied of all resources in the Estero, but questions remain as to whether short-term disturbance events have had long-term population consequences. Under the Proposed Action, the EIS should examine existing data and independently review the history of anthropogenic disturbance, based on statutory and regulatory definitions of harassment. The EIS should specify mitigation measures to either reduce the scope of the oyster operation or eliminate disturbances through other means.
4. Effects of mariculture on birds. The NRC report admits that no studies address directly the influence of the oyster farm on bird behavior or abundance in the Estero, although it is known that Drakes Estero is an important site for overwintering and seasonally migrating shorebirds and waterfowl. During a stage in oyster cultivation, mesh bags are tethered to stakes on sand bars in the Estero. There may be preferential responses from different shorebird species to the presence of these bags. Data from similar operations in Tomales Bay found that certain species avoided mariculture plots while others were attracted. This represents an important gap in scientific understanding of how large bird populations in the Estero have responded to the oyster operation over time. Other studies have suggested that operational noise from motorboats, equipment to shuck oysters, loud radio music at the facility may negatively impact shorebird and waterfowl populations. The EIS should review relevant data and, to the extent possible, make informed inferences of potential impact and recommend mitigation measures.
5. Effects of mariculture on non-native species. The NRC report suggests that hang-

ing rack culture is “environmentally friendly.” The report also admits that the culture racks and bags increase the availability of hard surfaces, the main substrate for colonization of the invasive tunicate (*Didemnum vexillum*). The EIS needs to review available data and objectively describe the role that the oyster growing media play in supporting this invasive species

Socioeconomic Resources

The NRC report correctly states that “the ultimate decision to permit or prohibit shellfish farming in Drakes Estero necessarily requires value judgments and tradeoffs that can be informed, but not resolved, by science.” Because value judgments derive from different sources and reflect different societal priorities, the EIS needs to provide a spectrum of views. The supporters of continuing the oyster farm hold up two predominant values to justify their position: the dollar contribution of oyster production in the agricultural economy of Marin; and, closely related, the oyster farm’s contribution to the culture of local food production and sustainability in West Marin. The number of jobs provided by the operation in a time of high unemployment has also been put forward to justify continuing the operation. These are all important and generally positive values that derive from economic activity and reflect immediate uses of the environment. Recreation value of the “PRNS experience” as a whole is large and, although not considered a market value, can be derived directly and indirectly from economic activity at the Park and in surrounding communities. Recreation doesn’t necessarily distinguish among various visitor activities, however.

Other, non-market values should be considered – values that cannot be purchased but exist rather in the knowledge that wilderness exists for future generations – termed existence and bequest values. In this context, the activities, motorboats, noise onshore from the oyster operation might be viewed as having a negative effect on the expected solitude of a wilderness area and the knowledge that such opportunity for solitude exists. Still another value to be considered is that of ecosystem services, beyond the revenues derived from oyster production, such as habitat for many organisms, nutrient cycling, air and water quality, storm regulation, etc. These services have been estimated in a number of general studies using shadow prices.

The effect of continuing or ceasing the oyster operation on both market and non-market value systems should be evaluated in the EIS. Some data will be readily available; most will not.

Park Operations and Management

Finally, the proposed project presents an unusual challenge for Park management. If the special use permit is granted, the PRNS will have to find a way to manage for a period of ten years an operation that continues to be a non-conforming use, within an area designated as potential wilderness subject to relevant policies and requirements. The EIS has an obligation to analyze these policies and recommend mitigation measures that can reconcile terms of the oyster farm permit that may conflict with wilderness management

policies. Until Congress chooses to act otherwise, the potential wilderness designation remains and supersedes the short-term use permit.

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Nona Dennis".

Nona Dennis
President
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