

RENEWAL OF LEASE

Made this eighth day of March, 2002 at San Diego, California by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor" and Cove Mussel Company, hereinafter referred to as "Lessee."

WITNESSETH:

WHEREAS, Lessee indicated an interest in renewing a prior lease agreement and exercised that option by requesting Fish and Game Commission consideration of the request in correspondence dated January 14, 2002, and

WHEREAS, Lessee is presently a registered aquaculturist authorized to grow marine life for profit in the waters of the State of California as provided in Section 15101 of the Fish and Game Code, and

WHEREAS, Lessee expressed support for the Lessor's recommended approval of the requested lease renewal for a 25-year period at an initial lease rate of twenty-three dollars (\$23) per acre, subject to adjustment considering changes in the Consumer Price Index and current lease rates no more often than every ten years, at the Fish and Game Commission's discretion, and

WHEREAS, the Fish and Game Commission determined that a lease renewal was in the best interest of the State of California at the March 8, 2002 meeting in San Diego, California and approved the renewal based on the renegotiated lease terms recommended by the Department of Fish and Game.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That, in consideration of payment of the monies hereinafter stated in accordance with the renegotiated terms recommended by the Lessor and accepted at a duly called and noticed hearing of the Fish and Game Commission of the State of California, pursuant to law and in consideration of the covenants contained herein on the part of the Lessee, Lessor does hereby grant to Lessee the exclusive privilege to cultivate approved shellfish hereon and in those certain waters of the State of California described as follows, to wit:

All that certain real property situated in the County of Marin, State of California, described as follows:

Beginning at a point which is located South 85°29' East 6,540.00 feet from a 1" Iron Pipe Monument marked NPS 2-F-3 at the southerly terminus of that certain course shown as South 33°18'25" East 616.12 feet on Sheet 2 of 9 sheets of that certain map entitled, "Point Reyes National Seashore", which map was filed in Book 3 of Official Surveys at Page 56 in the Office of the County Recorder of Marin County, California, and said 1" Iron Pipe having California Zone 3 Coordinates North 606,084.87, and East 1,310,543.53; thence from said point of beginning North 86°04' East 660.00 feet; thence South 3°56' East 660.00 feet; thence South 86°04' West 660.00 feet; thence 3°56' West 660.00 feet to the true point of beginning.

This parcel of water bottoms, containing ten (10) ± acres more or less, comprises aquaculture lease M-430-06.

This lease, in accordance with provisions of Section 15400 of the Fish and Game Code, as may from time to time be amended or changed by the State Legislature, is for the sole purpose of cultivating Pacific oyster (*Crassostrea gigas*), European flat oyster (*Ostrea edulis*), and bay mussels (*Mytilus edulis*) in the previously designated area. The cultivation of additional species of aquatic plants or animals must have approval of the Fish and Game Commission. Seed stock must be certified before planting in compliance with Section 15201 of the Fish and Game Code, and must be planted by Lessee in a manner and at a size approved by the Lessor to assure that harvested animals are a product of the lease. A request for certification of planting stock will be submitted by Lessee to the Lessor at least ten (10) days prior to the proposed date of inspection.

All oyster cultivation on the lease shall be confined to racks, trays, buoyed longlines, and rafts within the area approved by the Commission. No other mode of operation or culture method is authorized unless Lessee shall first obtain approval thereof from the Fish and Game Commission.

The notice of intent to plant shellfish on the lease shall be given to the Department of Fish and Game's, Marine Region Aquaculture Coordinator, P.O. Box 1560, Bodega Bay, California 94923, telephone (707) 875-4261, or at such other place as Lessor 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 coordinator or their designee, giving the details on where the shellfish seed can be inspected.

In accordance with actions taken by the Fish and Game Commission of the State of California, pursuant to Fish and Game Code Section 15400, Lessor does hereby renew said lease for such consideration, specific purposes and subject to covenants,

terms, conditions, reservation, restrictions and limitation as are set forth herein.

This lease renewal is authorized for a term of twenty-five (25) years commencing on the 8th day of March, 2002, and ending on the 7th day of March, 2027, for the total rental of two hundred seventy-six dollars (\$276) per year, and a privilege tax on all products harvested as provided by Fish and Game Code Sections 8051, 18406.5, and 15406.7. Beginning January 1, 2002, said annual rental fee will be payable to Lessor on a calendar year basis, January 1 – December 31. If said annual rental fee is not paid within sixty (60) days after the close of the month in which it is due, an additional 10 percent penalty shall be paid. Lessor, at its option, may declare the lease abandoned for failure to pay such rental fees within 90 days from the beginning of the rental period; although such abandonment shall not relieve Lessee of its obligation to pay such rental and penalty which are due and owing. Lessee agrees to pay Lessor reasonable attorney fees and costs incurred in collecting any amounts and/or penalties due and owing from Lessee under the provisions of this lease. Lessee agrees to pay said fee(s) to Lessor at its office in the City of Sacramento, State of California, or at such other place as Lessor may, from time to time, designate.

Lessee expressly recognizes and acknowledges that any payments by Lessee as provided for herein are subject to the provisions of Section 15410 of the Fish and Game Code which states "All leases shall be subject to the power of the Legislature to increase or decrease the rents, fees, taxes, and other charges relating to the lease, but no increase in rent shall be applicable to an existing lease until it is renewed."

This lease is made upon the following additional terms, conditions, and covenants, to wit:

- A. This lease may, at the option of Lessee, be renewed for additional periods not to exceed 25 years each. If the Lessee desires to enter into a new lease for a period commencing after expiration of the initial 25-year term, Lessee shall give notice to Lessor one (1) year prior to termination of the lease. The lease may be renewed if, during the notification period, terms for a new lease are agreed upon by Lessee and the Commission. Lessor retains the right to renegotiate terms of the lease, including annual rental rates, subject to adjustment considering changes in the Consumer Price Index and current lease rates, at the Fish and Game Commission's discretion, no more often than every ten (10) years during the current renewal period.
- B. Lessee shall keep records as required in accordance with Fish and Game Code Section 15414 on forms to be supplied by Lessor, and shall maintain adequate accounting records sufficient to determine monies due to Lessor by the 10th day of each month for all shellfish harvested during the preceding calendar month. Lessor reserves the right to inspect Lessee's premises, equipment and all books

at any time, and Lessee's records pertaining to its cultivation on the leased premises.

- C. The lease shall be improved at no less than the minimum rate established by Commission regulations (Section 237(i)(A) - (C), Title 14, CCR). A minimum rate of planting shall be negotiated for option periods. Lessor may declare this lease terminated if Lessee fails to meet these requirements, and if Lessee, at any time, is proven to be failing in good faith, to pursue the purpose of this lease.
- D. If, at any time subsequent to the beginning date of this lease the use of trays, racks, buoyed longlines, or rafts authorized herein shall fall into a state of disrepair or otherwise become an environmental or aesthetic degradation, as determine by Lessor, then upon written notice by Lessor, Lessee shall have sixty (60) days to repair and correct conditions cited by Lessor. Failure to comply with the written notice shall be ground for termination of this lease and Lessee shall, at the option of Lessor, remove all improvements located on lands covered by this lease. All such improvements to be removed shall be salvaged and removed by Lessee at Lessee's sole expense and risk within ninety (90) days after the expiration, or sooner termination of this lease. If Lessee fails to remove such improvements or portion thereof designated by Lessor, and restore the lease land as hereinafter provided, within ninety (90) days after the expiration date or sooner termination of the lease or notice by Lessor, Lessor may remove or have removed all of the improvements and charge the expense of such removal to Lessee. In making such removals, Lessee shall restore said leased land as nearly as possible to the condition existing prior to erection or placement of the improvements thereupon.
- E. Lessee shall observe and comply with all rules and regulations now or hereinafter promulgated by any governmental agency having authority by law, including but not limited to State Water Resources Control Board, State Coastal Commission, State Lands Commission, and U.S. Army Corps of Engineers. Any other permits or licenses required by such agencies will be obtained by Lessee at his own sole cost and expense.
- F. Lessee recognizes and understands in accepting this lease that his interest therein may be subject to a possible possessory interest tax that the county may impose on such interest, and that such tax payment shall not reduce any rent or royalty due the Lessor hereunder and any such tax shall be the liability of and be paid by Lessee.
- G. Any modification of natural or existing features of the real property described in this lease, which are not consistent with the authorized uses under this lease are expressly prohibited without prior written consent of the Lessor.

- H. As evidence of progress in aquaculture, Lessee shall submit each year to the State at the Marine Region office, P.O. Box 1560, Bodega Bay, California 94923, a written declaration under penalty of perjury, showing 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.
- I. This lease shall be canceled at any time Lessee fails to possess a valid aquaculture registration issued pursuant to Section 15101 of the Fish and Game Code. Lessee agrees not to commit, suffer, or permit any waste on said premises or any act to be done thereon in violation of any laws or ordinances. This lease shall be subject to termination by Lessee at any time during the term hereof, by giving Lessor notice in writing at least ninety (90) days prior to the date when such termination shall become effective. In the event of such termination by Lessee, any unearned rental shall be forfeited to the Lessor.
- J. This lease of State water bottoms only grants Lessee the exclusive right to cultivate marine life as described in the lease. The lease does not imply that any guarantee is given that shellfish may be grown or harvested for human consumption. The Lessor only has the statutory authority to enter into aquaculture leases (Fish and Game Code Section 15400 et. seq.). The California Department of Health Services has the authority (Health and Safety Code Section 28500 et. seq.) to certify and regulate sanitary procedures followed in the harvesting, handling, processing, storage, and distribution of bivalve mollusk shellfish intended for human consumption.
- K. In addition to the conditions and restrictions herein provided for in this lease, and any right or privilege granted, conveyed or leased hereunder, shall be subject to, and Lessee agrees to comply with all applicable provisions of the California Fish and Game Code, and regulation of the Fish and Game Commission, in particular Sections 15400 - 15415, inclusive, of the Fish and Game Code, and expressly recognizes the right of the Legislature and the Fish and Game Commission to enact new laws and regulations. In the event of any conflict between the provisions of this lease and any law or regulation, the latter will control. This lease shall be deemed amended automatically upon the effective date of such conflicting law or regulation.
- L. This lease is personal to the Lessee and shall not be transferred, assigned, hypothecated or subleased, either voluntarily or by operation of law, without prior approval of the Fish and Game Commission.

- M. The waiver by the Lessor of any default or breach of any term, covenant or condition shall not constitute a waiver of any other default or breach, whether of the same or any other term, covenant or condition, regardless of the Lessor's knowledge of such other defaults or breaches. The subsequent acceptance of monies hereunder by the Lessor shall not constitute a waiver of any preceding default or breach of any term, covenant or condition, other than the failure of the Lessee to pay the particular monies so accepted, regardless of the Lessor's knowledge of such preceding default or breach at the time of acceptance of such monies, nor shall acceptance of monies after termination constitute a reinstatement, extension or renewal of the agreement or revocation of any notice or other act by the Lessor. In the event of any breach by Lessee of any of the provisions hereof, other than the payment of any sum due from Lessee to Lessor hereunder, which breach is not remedied, abated and cured by Lessee within sixty (60) days after notice in writing, shall cause this lease to thereupon cease and terminate.
- N. Lessee shall not assign or transfer this agreement without prior written approval. Such written approval of the assignment or transfer of lease shall be subject to any and all conditions required by the Fish and Game Commission including, without limitation by reason of the specifications herein, the altering, changing or amending of this agreement as deemed by the Commission to be in the best interest of the State.
- O. All notices herein provided to be given or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, certified and postage prepaid and addressed as follows:

To the Lessor

DEPARTMENT OF FISH AND GAME
1416 Ninth Street
Sacramento, CA 95814

To the Lessee

MR. SCOTT ZAHL
COVE MUSSEL COMPNAY
P.O. Box 745
Marshall, CA 94940

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other, as hereinbefore provided.

- P. Lessee hereby indemnifies and holds harmless the Lessor, its officers, agents and employees against any and all claims and demands of every kind and nature whatsoever arising out of or in any way connected with the use by the Lessee of said lease or the exercise of the privilege granted herein.
- Q. The terms, provisions, and conditions hereof shall be binding upon and inure to the benefit of the parties and the successors, and assigns of the parties hereto.
- R. The attached Nondiscrimination Clause (OCP-1) Is hereby made a part of this agreement.

IN WITNESS THEREOF, the parties hereto have caused this lease to be duly executed as of the day and year first above written.

APPROVED:

FISH AND GAME COMMISSION

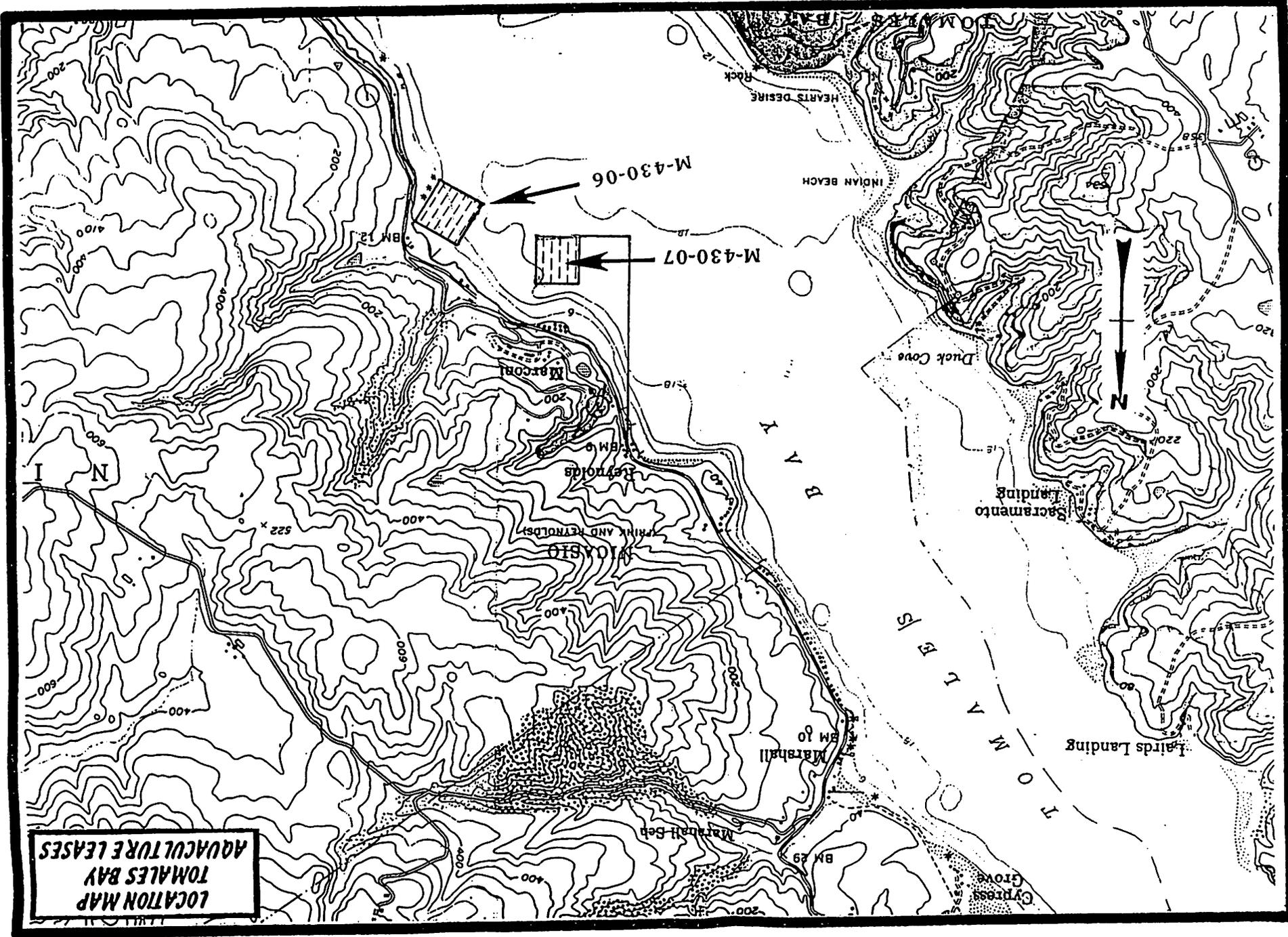
By: Robert A. Treanor

**STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME**

By: Brenda K. Duncan
Lessor for

COVE MUSSEL COMPANY

By: Scott Zahl
Lessee



LOCATION MAP
TOMALES BAY
AQUACULTURE LEASES

ADDENDUM TO
AQUACULTURE LEASE
BETWEEN
DEPARTMENT OF FISH AND GAME, LESSOR
AND

COVE MUSSEL COMPANY

NONDISCRIMINATION CLAUSE

(OCP - 1)

1. During the performance of this contract, contractor* and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors 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 Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
2. This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

* All references to "contractor" shall be deemed to be Lessee.