

STAFF SUMMARY FOR OCTOBER 7-8, 2015

6. NEUSHUL MARICULTURE (CONSENT)**Today's Item**Information Action

Approve Neushul Mariculture, Inc. request to renew state water bottom lease No. M-654-03 for aquaculture

Summary of Previous/Future Actions

- Receive renewal request Apr 8-9, 2015; Santa Rosa
- **Today approve renewal request Oct 7-8, 2015; Los Angeles**

Background

FGC has the authority to lease state water bottoms that grant exclusive privilege to any person for conducting aquaculture, for an initial lease term not to exceed 25 years (Fish and Game Code sections 15400 and 15405). An existing lease holder may request to renew a lease prior to expiration and, if still actively engaged in aquaculture as determined by FGC, the lessee shall have a prior right to renew the lease on terms agreed upon between FGC and the lessee (Fish and Game Code Section 15406).

In 2011, FGC approved a new lease template that specified terms to be applied to new leases as well as lease renewals (Exhibit 1). The new lease template established, among other things, a lease term of 15 years with subsequent 10-year renewal terms, annual lease rental rates based on high, moderate, and low productivity classifications (\$50, \$100, or \$150 per acre, respectively), with a provision that the State may review and recalculate lease rental rates no more frequently than every five years. The tenant is required provide to the State financial assurance sufficient for site clean-up if the lease is terminated or abandoned.

Neushul Mariculture, Inc. has held FGC-issued state water bottom lease M-654-03 in Santa Barbara Channel since 1980. The existing lease encompasses 25 acres of state water bottoms along the Santa Barbara coastline, for cultivating marine algae for research purposes, and is set to expire on Dec 8, 2015 (Exhibit 2). The lessee, Ms. Devon Harger of Neushul Mariculture, Inc., has submitted a request to renew the lease for a period of 15 years (Exhibit 4). There are no proposed changes to the culture methods or species currently authorized for the lease.

DFW has reviewed the current lease and request for renewal and provided recommendations to FGC (Exhibit 5). No changes to lease provisions or operations are proposed and, as a result, DFW has determined that the proposed project is subject to a categorical exempt from CEQA. The renewed lease would be subject to the new lease template, sets a renewed lease term of 15 years, and sets the annual rental rate based on the low productivity classification (\$50 per acre). Finally, to ensure that the lessee's current financial securities (see escrow agreement, Exhibit 3) are sufficient, DFW will conduct a site survey to confirm existing structures, obtain a third-party estimate for clean-up, and adjust required financial securities to cover site clean-up as required under the lease terms.

Significant Public Comments (N/A)

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Recommendation

FGC staff: Approve the lease renewal as recommended by DFW, and request that DFW proceed with steps to review and update escrow agreement if warranted.

DFW: Approve the lease renewal for a period of 15 years.

Exhibits

1. [Lease template for State water bottom leases](#)
2. [Neushul Mariculture, Inc. State Water Bottom Lease M-654-03 and maps](#)
3. [Neushul Mariculture, Inc. Escrow Agreement, May 11, 2010](#)
4. [Email from Neushul Mariculture, Inc., requesting renewal of lease M-654-03, received Mar 17, 2015](#)
5. [DFW memo, received Sep 4, 2015](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the Consent Calendar, items 2-6.

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
State of California)
Fish and Game State)
1416 Ninth Street, 13th Floor)
Sacramento, CA 95814)

Space Above Line for Recorder's Use Only

**LEASE GRANTING THE EXCLUSIVE PRIVILEGE
OF CONDUCTING AQUACULTURE AT
STATE WATER BOTTOM NO. M-000-00**

THIS LEASE GRANTING THE EXCLUSIVE PRIVILEGE OF CONDUCTING AQUACULTURE AT STATE WATER BOTTOM NO. M-000-00 ("Lease") is made and entered into as of [DATE], by and between [NAME], ("Tenant") and the California Fish and Game Commission ("State") with reference to the following facts:

RECITALS

Tenant wishes to lease a State Water Bottom for the purpose of propagating, cultivating, maintaining and harvesting aquatic plants and/or animals in marine waters of the state.

Fish and Game Code section 15400 authorizes the State to lease to any person the exclusive privilege to conduct aquaculture in any designated State Water Bottom if it determines that such lease is in the public interest.

[New lease]: On [DATE] the State awarded the lease for State Water Bottom No. M-000-00 to Tenant.

[Renewal]: On [DATE(s)] the State authorized renewal of the Lease for State Water Bottom No. M-000-00 to Tenant.

[Other]: On [DATE] [Note here any other significant events concerning the lease, e.g. amendment, assignment or designation of successor-in-interest.]

TERMS AND CONDITIONS

- LEASE.** The State hereby grants to Tenant the exclusive privilege to conduct aquaculture upon State Water Bottom No. M-000-00, subject to the terms and conditions of this Lease.
- DESCRIPTION.** This Lease covers that area comprising approximately 000.00 acres designated as State Water Bottom No. M-000-00 and shown on the Map and Description attached as **Exhibit A**, which is made a part of this Lease by this reference.

3. TERM. This Lease is for a period of 0.00 years commencing on [START DATE] and ending on [END DATE], unless renewed or sooner terminated in accordance with its terms.

4. ANNUAL RENT. The base rent for the Lease area is \$000.00 per acre, calculated to recover Tenant's share of the State's operational costs of the aquaculture bottom leasing program attributable to shellfish cultivation. The base rent shall be annually adjusted in the following manner:

The Department of Fish and Game shall determine the change in the "Implicit Price Deflator for State and Local government Purchases of Goods and Services," as published by the U.S. Department of Commerce, for the quarter ending March 31 of the current year compared to the quarter ending March 31 of the previous year. The relative amount of the change shall be multiplied by the amount of the annual rent.

No more frequently than at five-year intervals, the State, in its sole discretion, may recalculate the productivity classification by which the annual rent is calculated for Tenant to reflect changes in the State's operational costs of the aquaculture bottom leasing program attributable to shellfish cultivation. The 10-year average oyster production values fall into three productivity classifications:

- High productivity = >100,000 oysters/acre = \$150.00 per acre/year
- Moderate productivity = >20,000-99,000 oysters/acre = \$100.00 per acre/year
- Low productivity = >2,000-19,999 oysters/acre = \$50.00 per acre/year

Whenever such formula is updated, the annual rent first charged Tenant thereafter shall become the new base rent, subject to the foregoing adjustments for inflation thereafter.

Notice of the annual adjusted rent for the upcoming calendar year shall be given to Tenant by December 1. Until the notice of the annual adjustment is provided, Tenant remains obligated to pay rent at the previous rate. Pursuant to Fish and Game Code section 15407, the annual rent shall be paid within 30 days of the commencement date in Section 3, and within 30 days of each anniversary. Tenant shall remit such rent to: Department of Fish and Game, Fiscal and Administrative Services Branch, 1416 Ninth Street, 12th Floor, Sacramento, California 95814 RE: State Water Bottom Lease No. M-000-00.

Payment shall be made to the State in lawful money of the United States, provided that, if any payment made by a check, draft or money order is returned to The State due to insufficient funds or otherwise, the State shall have the right, upon written notice to Tenant, to require Tenant to make all subsequent payments in cash, or by cashier's or certified check.

5. LATE PAYMENT. Annual payment of rent is due and payable on the commencement date of this Lease or any anniversary thereafter, and is timely if received by the State within thirty (30) days of such commencement date or anniversary. Any annual payment not received by the State within thirty (30) days of the Lease commencement date or anniversary thereof, regardless of whether the 30th day falls on a Saturday, Sunday or holiday, will be subject to a late penalty consisting

of an administrative charge on the late amount, calculated at the rate of five percent (5%) of the amount of the late payment. The parties agree that the late charge represents a fair and reasonable estimate of the costs the State will incur because of late payment. Acceptance of the late charge by the State shall not constitute a waiver of Tenant's default for the overdue amount, nor prevent the State from exercising other rights and remedies granted under this Lease. Tenant shall pay the late charge as additional rent within 30 days of the due date of the original payment.

Any annual payment not received by the State within ninety (90) days of the commencement date of the Lease or within ninety (90) days of any anniversary thereof shall constitute a breach of Lease, giving rise to the State's remedies as set forth herein.

Annual rent due to the State, if not received by the State within ninety (90) days following the due date, will bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate legally permitted. Interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that legally permitted. Payment of interest shall not excuse nor cure any default by Tenant.

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

6. INSURANCE. Tenant shall furnish to the State certificate(s) of insurance stating that Public Liability Insurance is presently in effect for the Tenant and will be in effect throughout the period of this Lease with a combined single liability limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, and shall insure against all liability of Tenant and its employees and agents arising out of or in connection with Tenant's use and occupancy of the leased Lease area. The certificate(s) of insurance shall:

(a) Be furnished to the State by the insurance companies, and no such policy shall be cancelable or subject to reduction of coverage or other modification except after 30 days prior written notice to the State.

(b) Include the State of California, its officers, agents, employees and servants are included as additional insured but only insofar as the operations under the Lease are concerned.

(c) Provide that the State shall not be responsible for any premiums or assessments on any policy of insurance hereunder.

(d) Comply with those standards as determined by the State of California, Department of General Services, Office of Risk and Insurance Management.

Tenant agrees that the insurance required herein shall be in effect at all times during the term of this Lease, at the cost of Tenant. In the event said insurance, or any of it, expires or lapses at any time during the term of this Lease, the Tenant agrees to provide, no later than fifteen (15) days after said expiration or lapse, written evidence of required insurance coverage from the date of loss of the earlier insurance and continuing for not less than the remainder of the term of the Lease. Tenant's failure to

keep in effect at all times all insurance required by this Lease shall be grounds for termination of the Lease, in addition to any other remedies available to the State.

Where Tenant has any employees, a program of workers' compensation insurance, in an amount and form to meet all applicable requirements of the Labor Code of California, shall be in place throughout the term of this Lease. Such insurance shall include employer's liability coverage of One Million Dollars (\$1,000,000.00) and shall specifically cover all persons providing services by or on behalf of Tenant and shall cover all risks to such persons under this Lease.

7. INDEMNITY AND WAIVER. (For purposes of this Section 7, the term, "State", shall include the Department of Fish and Game as well as the Fish and Game Commission.) Tenant hereby waives all claims and recourse against the State, including the right to contribution for loss or damage to persons or property arising from, or in any way connected with or incident to this Lease, except claims arising from, and only to the extent of the gross negligence or willful misconduct of the State, its officers, agents or employees. Tenant shall notify the Department of Fish and Game Aquaculture Coordinator immediately in case of any serious accident, injury, or casualty on, or potentially related to, the Lease area.

Tenant shall protect, indemnify, hold harmless, and defend the State, its officers, agents or employees, against any and all claims, demands, damages, costs, expenses or liability costs arising out of the use by Tenant, including its employees and agents, of the Lease area, except for liability arising out of, and to the extent of, the gross negligence or willful misconduct of the State, its officers, agents or employees for which the State is found liable by a court of competent jurisdiction.

Should the State be named as a defendant in any claim or legal action arising out of the use by Tenant, including its employees and agents, of the Lease area, upon tender of the claim or action by the State to Tenant, the Tenant shall assume the State's defense and represent the State in such legal action at Tenant's expense, subject to the provisions herein.

In lieu of tender to Tenant of the claim or action against the State, the State may elect to represent itself, in which event, the State shall bear its own litigation costs, expenses and attorney fees. Notwithstanding the foregoing, in the event the State is required to represent itself because of a conflict of interest by counsel representing Tenant, then Tenant, upon demand by the State, shall reimburse the State for the State's litigation costs, expenses and attorney fees. Costs shall include, without limitation, all attorney fees and costs, court costs, if any, costs of mediators or arbitrators, experts and consultants, and any other costs reasonably incurred in response to any claim.

In the event the State is found to be concurrently liable with Tenant by a court of competent jurisdiction for loss or damage to persons or property arising out of the use by Tenant, its employees and agents, of the Lease area, the State and Tenant shall cooperate and use their best efforts to seek and obtain an apportionment of liability from the court and neither party shall request a jury apportionment.

In the event the State is found to be liable for any other wrongful act, for which liability to another is determined by a court of competent jurisdiction for loss or damage to persons or property arising out of the use by Tenant, its employees and agents, of the

Lease area, the State shall bear its own litigation costs, expenses and attorney fees. If Tenant has paid for any such costs which are the responsibility of the the State under this provision, the State shall reimburse Tenant at Tenant's request. The State, in its sole discretion, may provide any reimbursement required in the form of a credit against any other money due the State under this Lease.

8. RENEWAL. Tenant may provide written notice to the Department of Fish and Game Aquaculture Coordinator that it is exercising its right to seek renewal of this lease at least 120 days and not more than 364 days (one year) prior to the expiration date in Section 3 pursuant to Fish and Game Code section 15406. So long as Tenant, during the period specified herein, is still actively engaged in aquaculture, as determined by the State, Tenant shall have a prior right to renew for a period of 0.00 years on terms to be agreed upon between the State, in consultation with the Department of Fish and Game Aquaculture Coordinator, and Tenant. If Tenant fails to give such notice of its right to seek renewal during the period specified herein, the Lease, including any remaining right to seek renewal, shall terminate upon expiration of the then-current term. Moreover, if Tenant is in default on the date of giving such notice, the notice shall be ineffective; if Tenant cures the default and provides a new notice thereafter all within the period specified herein for giving notice, that new notice shall be sufficient to exercise Tenant's prior right to renew. Provided, further, that if on the date a renewal term is to commence Tenant is in default, the renewal term shall not commence and this Lease shall expire at the end of the current term. However, if the State continues negotiating renewal terms after the prior term expires, then the holdover provisions of Section 9 may apply. In no event shall the term of this Lease, or the term of any renewal thereof, extend beyond 25 years each.

9. HOLDOVER. If the Term in Section 3 expires and the Lease has not been renewed pursuant to Section 8, and Tenant remains in possession of the Lease area with State's express or implied permission, Tenant shall become a tenant from month to month only, subject to all the provisions of this Lease except Sections 3, 4 and 5. During this holdover tenancy, a monthly rent representing one-twelfth of the current adjusted annual rent shall be payable on or before the first day of each month. It is expressly understood that a holdover tenancy does not create any right of renewal beyond that provided by Fish and Game Code section 15406 as set forth in Section 8, and that the only purpose of a holdover tenancy is to allow continuity of use of the property while the State continues to negotiate renewal terms or undertakes to issue a new lease to the highest responsible bidder pursuant to Fish and Game Code section 15406, or to allow the holdover tenant time to terminate and remove the aquaculture operation consistent with Fish and Game Code section 15409(a). If either party desires to terminate such holdover tenancy, it shall give the other party not less than thirty days advance written notice of the date of termination.

10. POSSESSORY INTEREST. Tenant understands and acknowledges that, pursuant to Revenue and Taxation Code section 107.6(a), any possessory interest created by this Lease may be subject to the payment of property taxes levied on that possessory interest.

Tenant agrees to pay, before delinquency, all lawful taxes, assessments, license fees and any other charges of any type whatsoever which at any time may be levied by the State, County, City or any tax or assessment-levying body upon any interest in or

created by this Lease, or any possessory right which Tenant may have in or to the Lease area covered hereby.

11. USE. Tenant shall use the Lease area only for the purpose stated in this Lease, and such use shall be continuous from commencement of the Lease term until its expiration or termination. Pursuant to Fish and Game Code section 15414, the State may require the Tenant to submit any periodic reports it deems necessary for the proper administration of State Water Bottom M-000-00.

The Lease area shall be continuously used by Tenant to conduct aquaculture operations, as aquaculture is defined in Fish and Game Code section 17. Tenant shall not use or permit the Lease area to be used in whole or in part during the term of this Lease for any purpose, other than as set forth herein, without the prior written consent of the State.

The possessory interest herein given to the Tenant does not exclude the general public from the Lease area, and Tenant may not unreasonably impede public access to state waters for purpose of fishing, navigation, commerce or recreation or other public trust values. However, Tenant may limit public access to the extent necessary to avoid damage to the Lease area and the aquatic life culture therein. This Lease is not intended to confer third party beneficiary status to anyone benefiting from the terms of this Lease. The possessory interest is further subject to all valid and existing contracts, leases, licenses, encumbrances, and claims of title which may affect the Lease area.

This Lease provides a tenancy of a temporary nature. The parties to this Lease agree that no Relocation Payment or Relocation Advisory Assistance will be sought or provided in any form as a consequence of this tenancy.

This Lease is of no force or effect until signed by both parties and all approvals are secured. Tenant may not commence performance until such approval has been obtained. Any commencement of performance prior to Lease approval shall be done at the Tenant's own risk. Nothing in this Lease may be waived, modified, amended or discharged except by a writing signed by the State and Tenant and approved by the State in a public meeting.

12. SHELLFISH PRODUCTION IMPROVEMENTS.

[Oyster Cultivation.

[(A) Bottom culture: leases must be improved at an average rate of at least two cases of seed-bearing shell (160 pounds of seed-bearing shell) or 30 bushels of shellfish one or more years of age per acre over the allotted acreage per year. Improvements by unattached, single seed (less than one year old) shall consist of planting an average rate of 10,000 single seed per acre per year over the allotted acreage. Term of improvement shall be four years for seed-bearing shell and three years for oysters one or more years of age.

[(B) Off-bottom culture: leases must be improved at an average rate of at least one case of seed-bearing shell (80 pounds of seed-bearing shell), or 15 bushels of oysters one or more years of age per acre over the allotted acreage per year. Improvement by unattached single seed (less than one year old) shall consist of planting an average

rate of 5,000 single seed per acre per year over the allotted acreage. Term of improvement shall be four years for seed-bearing shell and three years for oysters one or more years of age.

[(C) Production requirements: the annual harvest rate shall be an average of 2,000 oysters per acre (over one year of age) over the allotted acreage effective three years after the effective date of the lease. Harvest reports shall be recorded in the form of a receipt in quadruplicate furnished by the Department of Fish and Game. The triplicate copy shall be delivered to the Department of Fish and Game on or before the first and sixteenth day of each month.

[(2) Miscellaneous Aquatic Species.

[(A) A lease for the cultivation of species other than oysters will include minimum planting and harvesting requirements for the species to be cultivated to insure that water bottoms so encumbered will be used for the purpose intended.

[(B) Harvest amounts shall be recorded in the form of a receipt in quadruplicate furnished by the Department of Fish and Game. The triplicate copy shall be delivered to the Department of Fish and Game on or before the first and sixteenth day of each month.]

13. NO WARRANTY. This Lease is made without warranty of title, condition or fitness of State Water Bottom M-000-00 for the Tenant's intended purpose or use.

Tenant agrees to accept the Lease area in its presently existing condition, "As Is", and that the State shall not be obligated to make any alterations, additions or betterments thereto except as otherwise provided in the Lease.

14. COMPLIANCE. As a necessary condition for this Lease, Tenant must obtain and maintain all necessary registrations, permits and any other entitlements. Tenant shall comply with all applicable federal, state and local laws, including laws relating to public health and safety, zoning, resource conservation and environmental protection including, but not limited to, the Coastal Zone Act, the Porter-Cologne Water Quality Act, and the California Environmental Quality Act.

Tenant shall comply with all applicable resource management and preservation mandates in the conduct of all activities that impact cultural, natural, or scenic resources. These mandates include, but are not limited to, those found in Public Resources Code sections 5024 and 5097 and the United States Secretary of the Interior's Guidelines for Historic Preservation. Tenant's operations under this Lease shall ensure that the State's goals of ensuring historical preservation and proper cultural, scenic and natural resource management are continually achieved in a manner consistent with applicable law.

15. RECORD KEEPING. The State may require periodic reports from Tenant as the State deems necessary for the proper administration of the State's water bottoms.

Tenant agrees that the Fish and Game Commission, Department of Fish and Game, and the Bureau of State Audits, or their designated representative, shall have the right to review and copy any records and supporting documentation pertaining to the

performance of this Lease. Tenant agrees to maintain such records for possible audit for a minimum of three years after final payment. Tenant agrees to allow the auditor(s) prompt access to such records during normal business hours and similarly to allow interviews of any employees who might reasonably have information related to such records. Tenant agrees to include a similar right of the State to audit records and to interview staff in any sublease or contract related to performance of this Lease.

16. WAIVER AND CONSENT. Unless expressly acknowledged by the State in writing, no term, covenant, or condition of this Lease and no default or breach is waived by the acceptance of a late or nonconforming performance. The State's consent for one transaction or event under this Lease is not consent to any subsequent occurrence of the same or any other transaction or event.

17. BREACH. The occurrence of any one of the following shall constitute a breach of this Lease by Tenant: (1) Failure of Tenant to make any annual Lease payment within ninety (90) days of the commencement date of the Lease or within ninety (90) days of any anniversary thereof; (2) Failure of Tenant to make any other payment more than thirty (30) days after such payment is due; (3) abandonment of the Lease area determined after the State has followed the procedures set forth in Civil Code section 1951.3; or (4) any failure by Tenant to comply with laws applicable to the conduct of aquaculture.

Should a threat to public health or safety or to the environment be created or exist on the Lease area, the State may declare an emergency event and, unless an alternative arrangement is preferable in the State's discretion, may enter upon and take possession of the Lease area to remedy the emergency without prior notice and/or demand an assignment of the right to operate the Lease area. Upon entering the Lease area under this Section, the State shall provide immediate notice of such action by hand delivery or fax of its declaration to Tenant. The State may retain possession of the Lease area until the emergency event has been completely and adequately addressed to the State's satisfaction. Where a breach of this Lease has caused or exacerbated the emergency event, or where the Tenant is non-cooperative in allowing or addressing any remedial action necessary because of the emergency event, the State may terminate the Lease. The State shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of the State's entry in the Lease area as provided herein, except damage resulting from the active negligence or willful misconduct of the State or its authorized representatives.

Any failure by Tenant to observe or perform another provision of this Lease where such failure continues for twenty (20) days after written notice thereof by the State to Tenant; any such notice shall be deemed to be the notice required under Code of Civil Procedure section 1161. However, if the nature of Tenant's breach is such that it cannot reasonably be cured within the twenty (20) day period, Tenant shall not be deemed to be in breach if Tenant shall commence such cure within the twenty (20) day period and thereafter diligently prosecutes such cure to completion.

Neither this Lease nor any interest of Tenant hereunder in the Lease area shall be subject to involuntary assignment or transfer by operation of law in any manner whatsoever, including, without limitation, the following: (a) transfer by testacy or intestacy; (b) assignments or arrangements for the benefit of creditors; (c) levy of a writ

of attachment or execution on this Lease; (d) the appointment of a receiver with the authority to take possession of the Lease area in any proceeding or action in which the Tenant is a party; or (e) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or of a petition for reorganization or arrangement under any law relating to bankruptcy. Any such involuntary assignment or transfer by operation of law shall constitute a breach by Tenant and the State shall have the right to elect to take immediate possession of the Lease area, to terminate this Lease and/or invoke other appropriate remedies, in which case this Lease shall not be treated as an asset of Tenant.

Notices of breach shall specify the alleged breach and the applicable Lease provision and shall demand that Tenant perform the provisions of this Lease within the applicable time period or quit the Lease area. No such notice shall be deemed a forfeiture or a termination of this Lease unless the State specifically so states in the notice.

18. REMEDIES. In the event of breach by Tenant, the State shall have the following remedies. These remedies are not exclusive; they are cumulative and are in addition to any other right or remedy of the State at law or in equity.

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

Continued Performance: At the State's option, Tenant shall continue with its responsibilities under this Lease during any dispute.

Termination of Tenant's Right to Possession: Upon an event of breach of this Lease by Tenant, in addition to any other rights or remedies it may have, the State may give Tenant a three-day notice to cure the breach or quit the Lease area. If Tenant fails to do either, the State may bring a statutory proceeding in unlawful detainer to regain possession of the Lease area. Any notice give by the State pursuant to this Section does not constitute a termination of this Lease unless expressly so declared by the State in the notice. In the absence of written notice from the State, no act by the State, including, but not limited to, acts of maintenance, efforts to re-let and/or assign rights to possession of the Lease area, or the appointment of a receiver on the State's initiative to protect the State's interest under this Lease shall constitute an acceptance of Tenant's surrender of the Lease area, or constitute a termination of this Lease or of Tenant's right to possession of the Lease area. Upon such termination, the State has the right to recover from Tenant: (a) the worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease; (b) the worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of loss of rent that Tenant proves could have reasonably been avoided; (c) the worth, at the time of the award, of the amount by which the unpaid rent for the balance

of the term after the time of the award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and (d) any other amount necessary to compensate the State for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease, and costs of clearing the State's title of any interest of Tenant, commissions, attorneys' fees, and any other costs necessary or appropriate to make the Lease area operational by a new Tenant.

"The worth, at the time of the award," as used herein above shall be computed by allowing interest at the lesser of a rate of ten percent (10%) per annum or the maximum legal rate.

Receiver: If Tenant is in breach of this Lease, the State shall have the right to have a receiver appointed to collect rent and conduct Tenant's business or to avail itself of any other pre-judgment remedy. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by the State to terminate this Lease.

Right to Cure Tenant's Breach: At any time after Tenant commits a breach, the State can cure the breach at Tenant's cost. If the State, at any time by reason of Tenant's breach, pays any sum or does any act that requires the payment of any sum, the sum paid by the State shall be due immediately from Tenant to the State, and if paid at a later date shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by the State until the State is reimbursed by Tenant.

Personal Property of Tenant: In the event any personal property or trade fixtures of Tenant remain at the Lease area after the State has regained possession, that property or those fixtures shall be dealt with in accordance with the provisions for Surrender of the Lease area provided below.

State's Obligations After Breach: The State shall be under no obligation to observe or perform any covenant of this Lease on its part to be observed or performed that accrues after the date of any breach by Tenant. Such nonperformance by the State shall not constitute a termination of Tenant's right to possession nor a constructive eviction.

No Right of Redemption: Tenant hereby waives its rights under California Code of Civil Procedure sections 1174 and 1179 or any present or future law that allows Tenant any right of redemption or relief from forfeiture in the event the State takes possession of the Lease area by reason of any breach by Tenant.

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

Attorney's Fees and Costs: Tenant shall reimburse the State on demand for all reasonable attorney fees and expenses incurred by the State as a result of a breach under this Lease, provided that, in any litigation between the parties to this Lease concerning it, the prevailing party shall be entitled to recover court costs, reasonable attorney fees, and other costs reasonably incurred to secure the remedy obtained in the action.

The State shall not be in breach of the performance of any obligation required of it under this Lease unless and until it has failed to perform such obligation for more than thirty (30) days after written notice by Tenant to the State specifying the alleged breach and the applicable Lease provision giving rise to the obligation. However, if the nature of the State's obligation is such that more than thirty (30) days is required for its performance, then the State shall not be deemed in breach if it shall commence performance within such 30-day period and thereafter diligently prosecute the same to completion.

19. ASSIGNMENT AND SUBLEASES. Pursuant to Fish and Game Code section 15412, this Lease may not be assigned, in whole or in part, by Tenant, either voluntarily or by operation of law, and no subleases or other rights may be granted under it by Tenant without the prior written approval of the State, subject to the conditions that it prescribes. At the election of the State, any attempted assignment or subletting without such prior approval of the State shall terminate this Lease.

20. TERMINATION. In the event the Lease area becomes unsuitable for the practical cultivation or harvest of shellfish, or in the event the Tenant becomes unable to continue operating the Lease for aquaculture for reasons beyond Tenant's ability to control, Tenant may terminate the Lease after thirty (30) days written notice to the State. Tenant may terminate the Lease for any other reason through a written request presented to and approved by the State at a public hearing held for purposes of consideration of Tenant's termination request. Such termination shall be effective thirty (30) days after State approval.

On expiration of or within thirty (30) days after earlier termination of the Lease, Tenant shall surrender the Lease area to the State. Tenant shall remove all of its personal property as well as all man-made material deposited during Tenant's occupancy within the above stated time unless otherwise agreed to in writing.

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

21. QUITCLAIM. Tenant shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute, acknowledge and deliver to the State in a recordable form provided by the State a release of all rights under this Lease. Should Tenant fail or refuse to deliver such a release, a written notice by the State reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Tenant of the expiration or termination of this Lease.

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

23. CHANGES. Nothing in this Lease may be waived, modified, amended, or discharged except by an instrument in writing signed by Tenant and the State, in consultation with the Department of Fish and Game Aquaculture Coordinator. At its discretion, the Department of Fish and Game may charge Tenant for any and all costs it incurs in any lease amendment requested by Tenant.

24. SEVERABILITY. If a court of competent jurisdiction determines that a Lease provision is legally invalid, illegal or unenforceable, and such decision becomes final, the provision shall be severed and deleted from the Lease and the remainder reasonably interpreted to achieve its intent. Tenant and the State agree to replace such void or unenforceable provision with a valid and enforceable provision that will achieve, to the extent possible, the purpose of the original provision.

25. SITE CLEANUP. Tenant shall provide to the State financial assurance sufficient to ensure that, upon termination or abandonment of this Lease, the Lease area is surrendered in a condition that is in accordance with Section 20, to the satisfaction of the State.

The financial assurance amount shall be calculated based on an analysis of the physical activities and materials necessary to surrender the site in the required condition; the unit costs or costs for third party contracting, for each of the identified activities as applicable; the number of units of these activities; and a contingency amount not to exceed ten percent (10%) of the costs of the activities.

Financial assurances may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the State which it reasonably determines to be adequate to perform restoration of the site. Personal surety bonds cannot provide financial assurance under this requirement. The financial assurance shall be payable to the State and shall remain in effect throughout the duration of the tenancy under the Lease, and until the State accepts surrender of the Lease area or until replaced by an equivalent financial assurance.

The financial assurance shall be applied by the State to place the Lease area in the condition required for surrender under Section 20, whenever the Tenant fails or refuses to accomplish such activities, and to reimburse the State for all its costs of achieving that condition of the Lease area. Any assets remaining from the financial assurance after all costs to the State, including administrative costs to secure the funds, have been reimbursed therefrom, shall be returned to the Tenant.

26. NON-DISCRIMINATION. In its use of the Lease area, Tenant shall not discriminate against, harass, or allow harassment against any person or class of persons on the basis of race, color, creed, religion, national origin, ancestry, sex, sexual orientation, age, marital status, medical condition or disability. Tenant shall ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment.

Tenant shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0 et seq.). Tenant shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Tenant shall include the non-discrimination and compliance provisions of this clause in all contracts to perform work under and/or in connection with this Lease.

Tenant shall be solely responsible for complying with the requirements of the Americans With Disabilities Act of 1990 (P.L. 101-336, commencing at section 12101 of Title 42, United States Code and including Titles I, II and III), the Rehabilitation Act of 1973, and all related regulations, guidelines and amendments to both laws.

27. DRUG-FREE WORKPLACE. Tenant will comply with the requirements of the Drug-Free Workplace Act of 1990, as amended, and will provide a drug-free workplace by taking the following actions:

(a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

(b) Establish a Drug-Free Awareness Program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Tenant's policy of maintaining a drug-free workplace; (3) any available counseling, rehabilitation and employee assistance programs; and, (4) penalties that may be imposed upon employees for drug abuse violations.

(c) Provide that every employee who works on the Lease area will: (1) receive a copy of the Tenant's drug-free policy statement; and, (2) agree to abide by the terms of the Tenant's statement as a condition of employment on the Lease area.

Failure to comply with these requirements may result in suspension or termination of this Lease, and Tenant may be ineligible for award of any future State Water Bottom Leases if the State determines that any of the following has occurred: (1) the Tenant has made false certification, or (2) violated the certification by failing to carry out the requirements as noted above.

28. ENTIRE AGREEMENT. This Lease contains the entire agreement between the parties, and an agreement hereafter shall be ineffective to change, modify or discharge it in whole or in part, unless such agreement is in writing and contains the authorized signature of the party against whom enforcement of the change, modification or discharge is sought.

29. CONSTRUCTION. This Lease shall be governed by and construed in accordance with the laws of the State of California. The Section titles in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Lease or in any way affect this Lease.

Tenant shall maintain annual registration of its aquaculture facility in accordance with Fish and Game Code sections 15101 and 15103 and shall keep current with all fees and surcharges, including any penalties for late payment of same, required by those statutes.

30. INCORPORATION BY REFERENCE. The provisions of Chapters 1 through 8 of Division 12 of the Fish and Game Code (commencing with section 15000) and the provisions of Chapter 9 of Division 1 of Title 14, California Code of Regulations (commencing with section 235), as may be amended from time to time, are made part of this Lease by this reference. If there is a conflict between any term or condition of

this Lease and any of the provisions incorporated by reference in it, the incorporated provisions shall control.

31. CONFLICTS OF INTEREST. Tenant warrants that no official, employee in the state civil service or other appointed state official, or any person associated with same by blood, adoption, marriage, cohabitation, and/or business relationship: (a) has been employed or retained to solicit or aid in the procuring of this Lease; or (b) will be employed in the performance of this Lease without the immediate divulgence of such fact to the State. In the event the State determines that the employment of any such official, employee, associated person, or business entity is not compatible, Tenant shall terminate such employment immediately. For breaches or violations of this Section, the State shall have the right to annul this Lease without liability.

32. EXPATRIATE CORPORATION. Tenant hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation, within the meaning of Public Contract Code sections 10286 and 10286.1 and is eligible to contract with the State.

33. NO AGENCY. The Tenant, and the agents and employees of the Tenant in the performance of the Lease, shall act in an independent capacity and not as officers or agents of the State of California.

34. CLOSURE. Neither the State nor the Department of Fish and Game shall have any liability arising from a closure of waters by the Department of Fish and Game Director pursuant to Fish and Game Code section 5654, where aquaculture operations are taking place.

35. NOTICES. Notices to the parties to this Lease shall be made in writing and may be given by delivery in person, by U.S. Mail with postage prepaid, or by receipt-confirmed facsimile to:

FISH AND GAME COMMISSION Executive Director 1416 Ninth Street, 13 TH Floor Sacramento, CA 95814 Telephone: (916) 653-4899 Facsimile: (916) 653-5040	[BUSINESS NAME] [PERSON/TITLE] [ADDRESS] [CITY/STATE/ZIP] Telephone: (000) 000-0000 Facsimile: (000) 000-0000
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Notices shall be deemed given upon delivery to the addressee. Any notice given by facsimile shall also be given to the addressee by U.S. Mail, with postage prepaid. If a notice given by facsimile is delivered to the addressee after 5:00 p.m. Pacific time, or on a Saturday, Sunday or State of California or national holiday, the notice shall be deemed given on the next business day. Either party may change its address for notice purposes by giving written notice to the other party in the manner provided in this Section.

36. SPECIAL CONDITIONS. [THIS SPACE RESERVED FOR ANY SITE-SPECIFIC PROVISIONS OR EXCEPTIONS/MODIFICATIONS TO THE PRECEDING SECTIONS.]

SIGNATURE PAGE

This Lease and any amendment(s) may be executed in counterparts, each of which, when executed and delivered by the State and Tenant, shall be an original and together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

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

Where Tenant is a corporation, the signature of the Tenant on this Lease will be verifying that Tenant is currently qualified to do business in the State of California, as defined in Revenue and Taxation Code section 23101, in order to ensure that all obligations to the State are fulfilled. Both domestic and foreign corporations (those incorporated outside the State of California) must be in good standing in order to be qualified to do business in California.

STATE,

California Fish and Game Commission

By: _____
[NAME], Executive Director

Date: _____

TENANT,

[BUSINESS NAME]

By: _____
[NAME], [TITLE]

Date: _____

EXHIBIT A

RENEWAL OF LEASE

Made this ninth day of December, 2005 at Concord, California by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor" and Neushul Mariculture, Inc., hereinafter referred to as "Lessee.

WITNESSETH:

WHEREAS, Lessee indicated an interest in renewing a prior lease agreement in correspondence dated March 31, 2005 and requested an extension of the lease to renegotiate specific terms of the lease, and

WHEREAS, the Fish and Game Commission at the June 24, 2005 meeting in Bishop, California granted the Lessee's request to extend the lease for 120 days to renegotiate specific terms for the new lease, and

WHEREAS, the Fish and Game Commission at the September 30, 2005 meeting in Susanville, California granted the Lessee's request to extend the lease for an additional 120 days to renegotiate specific terms for the new lease, 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 10-year period, at an initial lease rate of twenty-one dollars (\$21.00) per acre at signing and subject to adjustment considering changes in the Consumer Price Index and current lease rates no more often than every five 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 December 9, 2005 meeting 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 marine algae hereon and in those certain waters of the State of California described as follows, to wit:

All that area of state water bottoms lying within the Santa Barbara Channel (Santa Barbara County), State of California, consisting of two (2) parcels of water bottom lying adjacent to the Ellwood Pier near Ellwood, Santa Barbara County, as shown on the Dos Pueblos Canyon Quadrangle, California, 7-1/2 minute series (topographic) United States Department of Interior, Geological Survey, ranging in depth from 3.05-10.6 meters (10-35 feet), and being more particularly described as follows:

Parcel 1 (of two parcels)

Beginning at a point 1,617 feet from the base, which is the new end of Ellwood Pier, located at approximately 34° 25' 56" North Latitude, 119° 55' 27" West Longitude; thence N 61° 50' W 418 feet, thence South 28° 10' West 209 feet, thence North 61° 51' West 1,254 feet; thence North 28° 10' East 418 feet; thence South 61° 50' East 1,254 feet; thence North 28° 10' East 1,045 feet; thence South 61° 50' East 418 feet; thence South 28° 10' West 1,254 feet along the alignment of and contiguous to, the Ellwood Pier to the point of beginning, containing twenty-four (24) acres more or less.

Parcel 2 (of two parcels)

Beginning at a point which is approximately 393 feet southwesterly from the end of the Ellwood Pier located at approximately 34°25' North Latitude, 119° 55' 23" West Latitude along the old pier alignment South 28° 10' West 209 feet, thence South 61° 50' East 104.5 feet, thence North 28° 10' East 209 feet, thence North 61° 50' West 104.5 to the point of beginning, containing one (1) acre more or less. All bearings true.

These parcels (1 and 2), containing 25 acres more or less, together comprise Aquaculture Lease M-654-03 (Exhibit 1).

This lease, in accordance with the provisions of Fish and Game Code Section 15400, as may from time to time be amended or changed by the State Legislature, is for the sole purpose of cultivating the native marine algae *Gelidium spp.*, *Macrocystis pyrifera*, *M. angustifolia*, *M. intergrifolia*, and *Pelagophycus spp.*, and the exotic algae *Euchema uncinatum* (male plants only) in the previously designated area. All algae shall be planted by the Lessee in a manner approved by the Lessor, to assure that only healthy seed plants will be planted in compliance with Section 15200 of the Fish and Game Code.

Selective removal by hand only, of competing vegetation and sea urchins will be permitted where necessary to enhance survival, growth and proliferation of cultivated plants.

Juvenile plants may be grown in facilities approved by Lessor for transplanting on lease area. Cultivated plants may be harvested in any manner to establish the most suitable method of harvest.

The notice of intent to plant marine algae 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

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 five (5) 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 Lessor by the 10th day of each month for all marine algae 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 of approved species of marine algae on the leased premises and all such marine algae taken from the leased premises.
- C. In order to provide assurance to lessor that this aquaculture lease is utilized for the development of techniques that may be employed for commercial cultivation of algae as stated in the lease application, Lessee shall report on its planting and harvesting activities each year in the annual proof-of-use statement required in Section H of this agreement. Lessor may declare this lease terminated 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 algae culture equipment authorized herein shall fall into a state of disrepair or otherwise become an environmental or aesthetic degradation, as determined 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 grounds for termination of this lease and Lessee shall, at the option of Lessor, remove all improvements located on lands covered by this lease.

As a financial guarantee of growing structure removal and/or clean-up expense in the event the lease is abandoned or otherwise terminated, Lessee shall place on deposit, pursuant to the "Escrow Agreement for Clean-up of Aquaculture Lease M-653-09, Santa Barbara Channel, Santa Barbara County, California", (Addendum 2) the sum of five hundred dollars (\$500). Such money shall be deposited upon entering the lease. The escrow account shall be increased if the Fish and Game Commission determines that, if abandoned, the culture operation is likely to be more expensive to remove. The escrow account may be reduced by the Commission upon demonstration that the probable cost of removal of all improvements would be less than the deposit previously required. In its annual Proof-of Use Report, the Lessor shall advise the Commission of its best estimate of the probable cost of removal the lease operation. The escrow agreement, escrow holder, and escrow depository shall be agreed upon by the Executive Director of the Fish and Game Commission and the Lessor.

If Lessee abandons this lease without removing growing structures therefrom, the escrow deposit shall be expended to remove growing structures or otherwise clean up the lease.

In order to assure compliance with the escrow provisions of this lease, Lessee shall dedicate to the agreed upon escrow account specified in the "Escrow Agreement for Clean-up of Aquaculture Lease M-653-09, Santa Barbara Channel, Santa Barbara County, California", hereby attached to and made part of this agreement, a total of five hundred dollars (\$500). This amount equals the whole of the amount, five hundred dollars (\$500), to be deposited in the "Escrow Agreement for Clean-up of Aquaculture Lease M-653-09, Santa Barbara Channel, Santa Barbara County, California, Escrow Account".

- 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. 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.

- K. 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.
- L. 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.
- M. 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.
- N. 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.
- P. 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.
- Q. The attached Nondiscrimination Clause (OCP-1) is hereby made a part of this agreement.

Except as herein amended, all other terms of said lease agreement shall remain unchanged and in full force and effect.

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: _____
JOHN CARLSON JR., EXECUTIVE DIRECTOR

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

By: _____
LESSOR

**BRUCE HARGER
NEUSHUL MARICULTURE, INC.**

By: _____
LESSEE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA }
COUNTY OF _____ }SS

On _____ before me, _____,

personally appeared _____,

personally known to me

NAME(S) OF SIGNER(S)

- OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

INDIVIDUAL
CORPORATE OFFICER

TITLE(S)

TITLE OR TYPE OF DOCUMENT

PARTNER(S)
LIMITED or GENERAL
ATTORNEY-IN-FACT
TRUSTEE(S)
GUARDIAN/CONSERVATOR
OTHER:

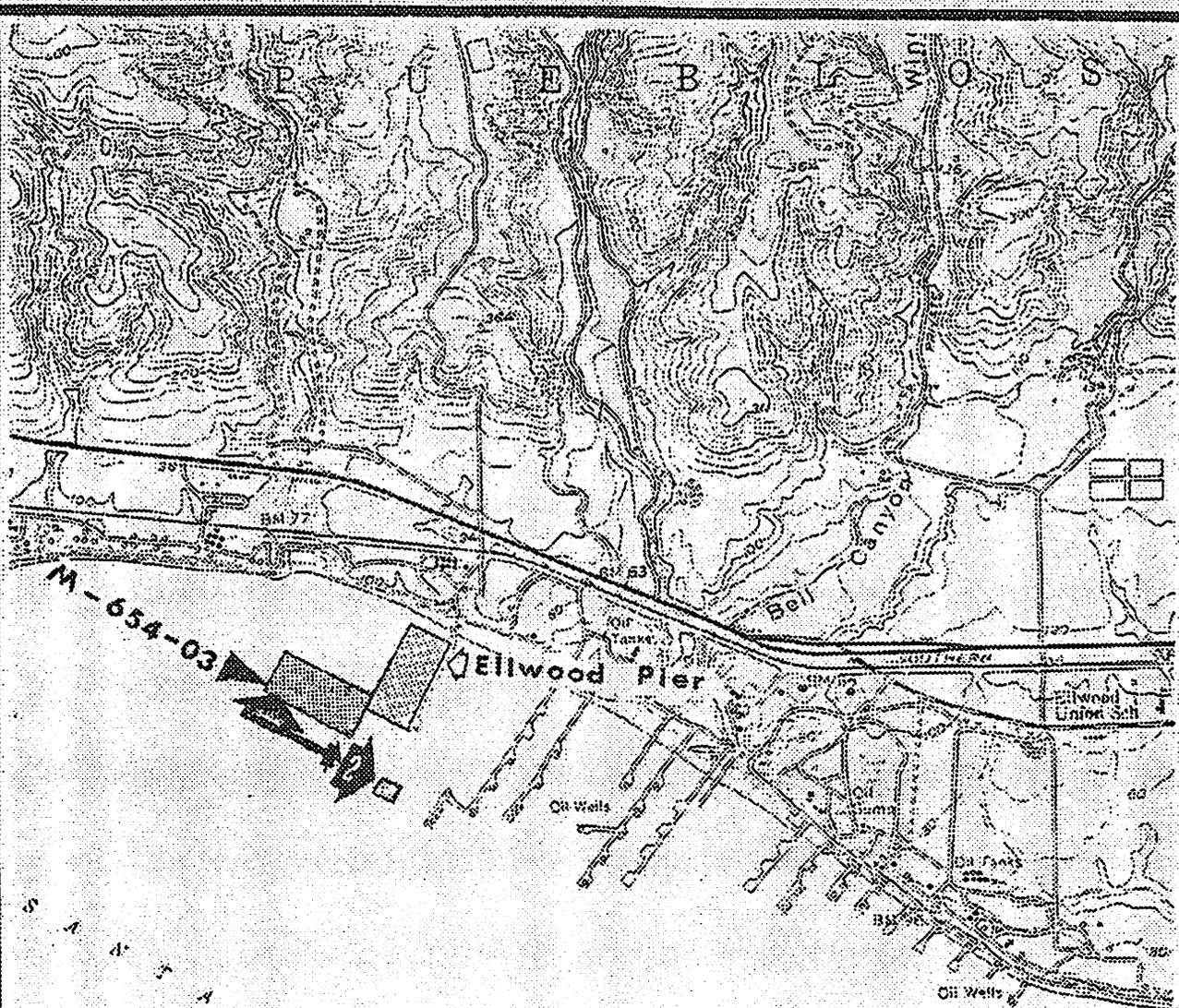
NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

SIGNER(S) OTHER THAN NAMED ABOVE



LOCATION MAP
 SANTA BARBARA AREA
 AQUACULTURE LEASES



DEPARTMENT OF FISH AND GAME MARINE RESOURCES DIVISION

EXHIBIT 1

**ADDENDUM TO
AQUACULTURE LEASE BETWEEN DEPARTMENT OF FISH AND GAME,
LESSOR AND NEUSHUL MARICULTURE, INC.**

**ESCROW AGREEMENT FOR
CLEANUP OF AQUACULTURE LEASE M-654-03
SANTA BARBARA CHANNEL, SANTA BARBARA COUNTY, CALIFORNIA**

(Addendum 2)

This Escrow Agreement is an addendum to the original lease M-654-03, dated May 1, 1980 and is being entered into as of the eleventh day of May, 2010, between the State of California, acting by and through its Department, of Fish and Game, hereinafter referred to as "Lessor", and Neushul Mariculture, Inc., hereinafter referred to as "Lessee".

This Escrow Agreement is subject to the original Lease Agreement for Lease No. M-654-03, dated May 1, 1980 and subsequent lease renewal for Lease M-654-03, dated December 9, 2005 and in accordance with Paragraph D thereof.

As a financial guarantee of growing structure or other lease improvement removal and/or cleanup expense in the event that the aforementioned aquaculture lease is abandoned or otherwise terminated, the parties agree as follows:

1. Lessee will deposit or cause to be deposited in escrow in cash or by certified check, funds totaling \$500, which funds will consist of the following:

(a) \$500.00 deposited upon entering upon the lease;

In the event that Lessor fails to deposit funds as required by Subparagraph (a) herein, Lessor may terminate Lessee's aquaculture lease by giving sixty days notice to Lessee by registered or certified mail.

2. Mr. Bruce Harger shall act as Escrow Agent and shall place the escrow deposits in an interest-bearing account in Santa Barbara Bank and Trust, Santa Barbara, California, subject to disposition as hereinafter provided. Account shall be established with a warning to all bank employees that funds may not be released without written permission from an agent of The State of California. Such deposits shall be retained in a separate account designated "Lease M-654-03, Santa Barbara Channel, Santa Barbara County, Cleanup Fund" by Escrow Agent as trustee for Lessor.

3. Neushul Mariculture Inc. shall be responsible for paying all fees and expenses incurred by Escrow Agent in administering the escrow account. These expenses and payment terms shall be determined by the Escrow Agent.

4. The interest earned on the trust account held in escrow and all interest earned on that interest shall be for the sole account of Neushul Mariculture Inc., and may be withdrawn by Neushul Mariculture Inc., at any time for distribution without notice to Lessor.

5. Lessee shall make payments to the Escrow Agent on account of the Lease M-653-09, Offshore Waters, Santa Barbara County, Cleanup Fund in the manner prescribed in paragraph 1(a) until the sum of five hundred dollars (\$500.00) is reached.

6. When Lessee deposit funds into escrow, Escrow Agent shall notify Lessor in writing within ten days of receipt thereof.

7. Escrow Agent shall notify Lessor in writing when five hundred dollars (\$500.00) has been deposited to the escrow account and provide written verification from the bank of such deposit. Thereafter, on the anniversary date of such initial notification, Escrow Agent shall report and certify the balance of funds on deposit accompanied by the accounting records provided by the banking institution of deposit.

8. The Lessor may increase or decrease the security amount held in escrow upon cause shown therefore and sixty days notice to Neushul Mariculture Inc. Lessee's Annual Proof of Use Report shall contain a reasonable estimate of the cost of removal of growing structures from each operation. Any increase required by the Lessor shall be deposited by the Lessee in the same proportion as provided in Paragraph 1; and any decrease shall be returned to the Lessee by the Escrow Agent in the same proportion provided in Paragraph 1.

9. Should Lessee transfer his interest under the lease with the approval of the California Fish and Game Commission, Escrow Agent shall transfer such escrow deposit to the successor in interest, and thereafter notify all parties hereto of such transfer. The successor in interest shall have all of the rights and obligations of Lessee with respect to such escrow deposit.

10. If, on termination of an aquaculture lease, Lessee removes all growing structures and improvements within sixty days, Lessee's escrow deposit shall be returned to Lessee by Escrow Agent no later than two weeks after receipt of written notice by Escrow Agent from Lessor authorizing such return.

11. If at any time during the lease term, Lessee abandons the lease without removing growing structures and improvements, Lessor shall do the following:

(a) Lessor shall appropriate and apply any portion of the escrow security as may be reasonably necessary to fund the cleanup;

12. Lessor shall have a right to draw upon the escrow account in the event of default by the Lessee. Upon seven days written notice to the Escrow Agent from the Lessor of the default, Escrow Agent must immediately distribute funds as instructed by Lessor.

13. Should Lessor actually resort to any monies contained within the escrow account under any of the above applicable provisions, Lessee agrees to deposit to the escrow account, in the same proportion as provided in Paragraph 1, the amount for which resort to the escrow security was had and necessary to restore the escrow security to the original sum required hereunder in thirty days after written demand by Lessor.

Restoration of escrow security shall be postponed during any period that Lessor re-advertises for bid and subsequently re-awards Lease M-654-03, Santa Barbara Channel, Santa Barbara County. Upon Lessor granting a lease to a successful bidder, the Lessee thereunder shall assume the obligations and rights of his predecessor Lessee, including, but not limited to, the deposit of funds as prescribed in Paragraph 1 (a).

Lessor shall not award or re-award a lease until the notice of deposit required by Paragraph 6 is received.

14. Escrow Agent shall rely on the written notifications from the Lessor, and the Lessor shall hold Escrow Agent harmless in its duties as Escrow Agent when Escrow Agent releases and disburses funds and interest pursuant to such a written notification.

15. Any notice required to be given under this Escrow Agreement may be given by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested. Notice shall be deemed communicated as of mailing. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this paragraph.

To the Lessor: DEPARTMENT OF FISH AND GAME
1416 Ninth Street
Sacramento, CA 95814

To the Escrow Agent: NEUSHUL MARICULTURE INC.
475 Kellogg Way
Goleta, Ca 93117-3804

To the Lessee: NEUSHUL MARICULTURE INC.
475 Kellogg Way
Goleta, Ca 93117-3804

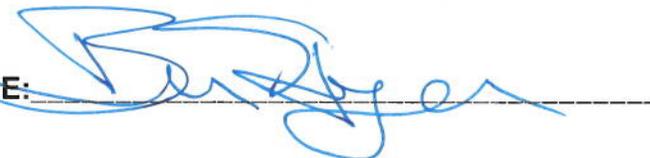
16. At the time this Escrow Agreement is executed by all parties, the Lessor shall deliver to the Escrow Agent a fully executed counterpart of this agreement.

In witness whereof, the parties have executed this agreement by their proper officers on the date first set above.

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

LESSOR: 

**BRUCE HARGER
NEUSHUL MARICULTURE INC.**

LESSEE: 

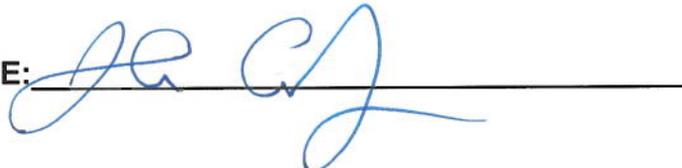
**ADDENDUM TO
AQUACULTURE LEASE BETWEEN DEPARTMENT OF FISH AND GAME,
LESSOR AND NEUSHUL MARICULTURE, INC.**

**ESCROW AGREEMENT FOR
CLEANUP OF AQUACULTURE LEASE M-654-03
SANTA BARBARA CHANNEL, SANTA BARBARA COUNTY, CALIFORNIA**

(Addendum 2)

**John Carlson
Fish and Game Commission**

LESSEE:

A handwritten signature in blue ink is written over a solid horizontal black line. The signature is cursive and appears to read 'John Carlson'.

From: **Bruce Harger**

Date: Tue, Mar 17, 2015 at 11:45 PM

Subject: Amended Request for Renewal of M-654-03

To: fgc@fgc.ca.gov

Cc: Kirsten Ramey <kramey@dfg.ca.gov>

To the Commission,

I would like to formally request a renewal of Aquaculture Lease M-654-03, Registration Number 0015 for 15 years.

Thank you for your consideration.

Sincerely,

Devon Harger
Owner, Neushul Mariculture, Inc.

cc: Kirsten L. Ramey; Susan Ashcraft

Memorandum

Date: September 10, 2015

To: Sonke Mastrup
Executive Director
Fish and Wildlife Commission

From: Charlton H. Bonham
Director



Subject: **Agenda Item for the October 7-8, 2015, Fish and Game Commission Meeting Regarding Proposed Renewal of State Water Bottom Lease, M-654-03, Neushul Mariculture, Inc., Santa Barbara**

The Department of Fish and Wildlife (Department) is providing the following comments in regard to a request by Mrs. Devon Harger, Neushul Mariculture, Inc., for Fish and Game Commission (Commission) approval to renew state water bottom lease M-654-03 for a period of 15 years. The existing lease encompasses 25 acres of state water bottoms along the Santa Barbara coastline and is set to expire on December 8, 2015.

The lease was created with the expressed intent to cultivate marine algae for research purposes and has been used for this purpose by Neushul Mariculture, Inc. during that period. There are no proposed changes in the culture methods or species currently approved by the Commission for the lease. However, if the lease renewal is approved, the lease should require the Lessee to establish financial assurances of growing structure removal and/or cleanup in the event the lease is abandoned or otherwise terminated.

Upon staff review, it was determined that the proposed project is subject to the "Class 1" or "Existing Facilities" categorical exemption pursuant to CEQA Guidelines section 15301 (Cal. Code Regs., tit. 14, § 15301). In general, the Class 1 exemption consists of the leasing of existing facilities, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. All provisions of the lease are identical to the original lease, with the only exception being the 15 year renewal of the lease term. This lease does not increase, decrease, or change existing operations in any way or allow for any new activities by the lessee.

The Department recommends approval of the request to renew state water bottom lease, Neushul Mariculture, Inc., to Mrs. Devon Harger for a period of 15 years.

If you have any questions regarding this item, please contact Dr. Craig Shuman, Regional Manager of the Department's Marine Region, at (805) 568-1246 or at Craig.Shuman@Wildlife.ca.gov.

Sonke Mastrup, Executive Director
Fish and Game Commission
September 10, 2015
Page 2

Attachment

ec: Department of Fish and Wildlife

Dan Yparraguirre, Deputy Director
Wildlife and Fisheries Division
Dan.Yparraguirre@wildlife.ca.gov

Craig Shuman, D.Env., Regional Manager
Marine Region (7)
Craig.Shuman@wildlife.ca.gov

Stafford Lehr, Chief
Fisheries Branch
Stafford.Lehr@Wildlife.ca.gov

Kirsten Ramey, Senior Environmental
Scientist Supervisor
Marine Region (7)
Kirsten.Ramey@wildlife.ca.gov

Randy Lovell, State Aquaculture
Coordinator
Randy.Lovell@wildlife.ca.gov

State Water Bottom Lease M-654-03 Legal Description

All that area of state water bottoms lying within the Santa Barbara Channel (Santa Barbara County), State of California, consisting of two (2) parcels of water bottom lying adjacent to the Ellwood Pier near Ellwood, Santa Barbara County, as shown on the Dos Pueblos Canyon Quadrangle, California, 7-1/2 minute series (topographic) United States Department of Interior, Geological Survey, ranging in depth from 3.05-10.6 meters (10-35 feet), and being more particularly described as follows:

Parcel 1 (of two parcels)

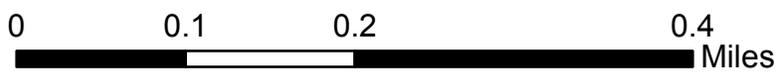
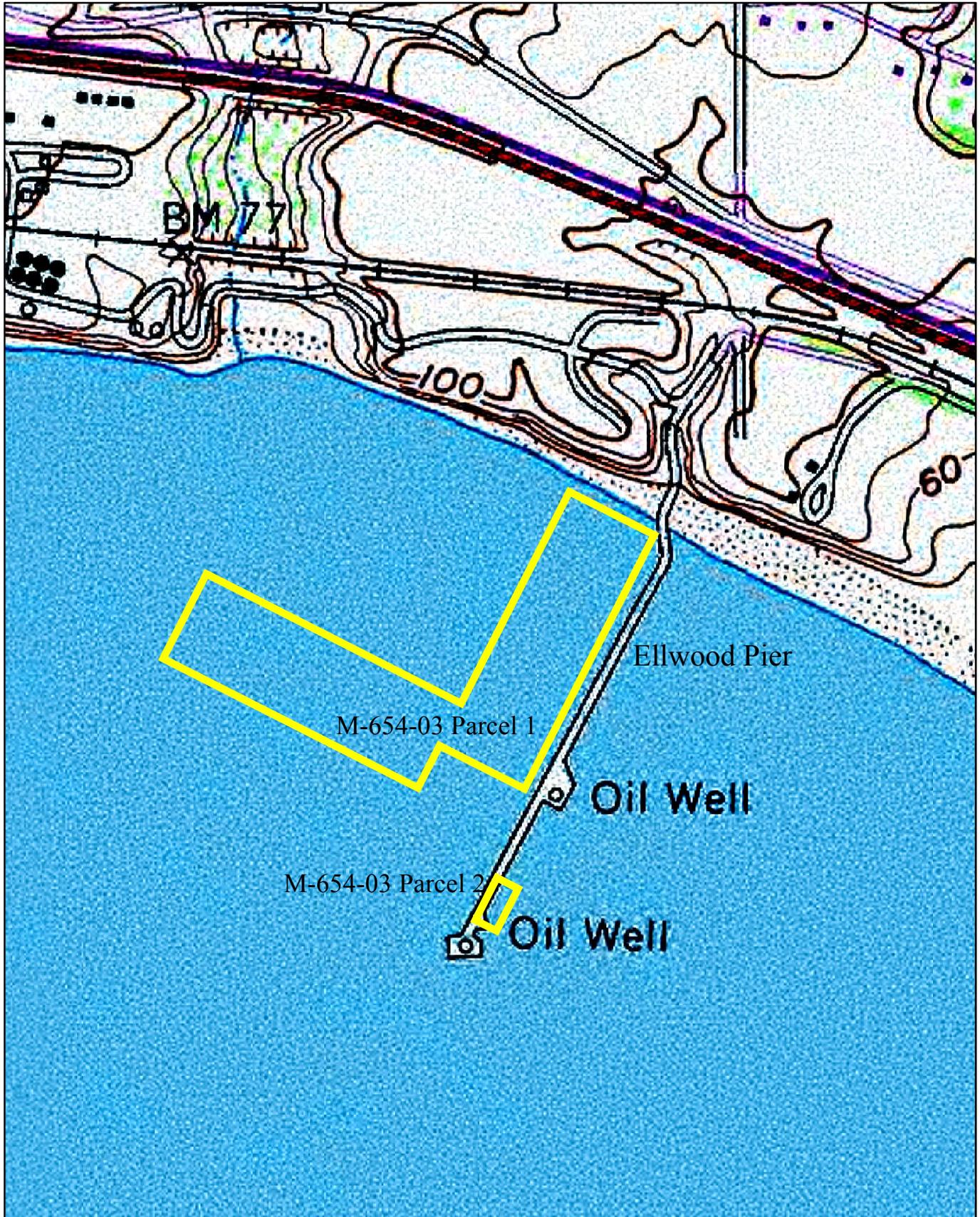
Beginning at a point 1,617 feet from the base, which is the new end of Ellwood Pier, located at approximately 34° 25' 56" North Latitude, 119° 55' 27" West Longitude; thence N 61° 50' W 418 feet, thence South 28° 10' West 209 feet, thence North 61° 51' West 1,254 feet; thence North 28°10' East 418 feet; thence South 61° 50' East 1,254 feet; thence North 28° 10' East 1,045 feet; thence South 61° 50' East 418 feet; thence South 28° 10' West 1,254 feet along the alignment of and contiguous to, the Ellwood Pier to the point of beginning, containing twenty-four (24) acres more or less.

Parcel 2 (of two parcels)

Beginning at a point which is approximately 393 feet southwesterly from the end of the Ellwood Pier located at approximately 34°25' North Latitude, 119° 55' 23" West Latitude along the old pier alignment South 28° 10' West 209 feet, thence South 61° 50' East 104.5 feet, thence North 28° 10' East 209 feet, thence North 61° 50' West 104.5 to the point of beginning, containing one (1) acre more or less. All bearings true.

These parcels (1 and 2), containing 25 acres more or less, together comprise Aquaculture Lease M-654-03 (Exhibit 1).

State Water Bottom Lease M-654-03
Santa Barbara, CA



CA Dept. Fish and Game

Coordinate system:
NAD 1983 California Teale Albers
Coordinates displayed in Decimal Degrees