



# United States Department of the Interior

OFFICE OF INSPECTOR GENERAL  
Washington, D.C. 20240

JUL 21 2008

## Memorandum

To: Mary A. Bomar,  
Director, National Park Service

From: Earl E. Devaney  
Inspector General

Subject: Report of Investigation - Point Reyes National Seashore

With this memorandum, I am transmitting the Office of Inspector General (OIG) Report Of Investigation (ROI) into issues related to the management of the Point Reyes National Seashore (PRNS).

Upon receipt of allegations by Kevin and Nancy Lunny against National Park Service (NPS) officials of scientific misconduct and disparate treatment in April 2007, a team of OIG investigators interviewed nearly 80 people from California, Colorado, Maine and the Washington, DC area, some of them multiple times. We also conducted a voluntary search of the PRNS Senior Science Advisor's office, retrieved and analyzed computer files from the PRNS Superintendent's and Senior Science Advisor's government computers, and reviewed over 1,100 documents and e-mail messages.

We did not, however, analyze the science involved, nor did we thoroughly parse the legalities of the issue of extending the lease beyond 2012. For the former, we simply do not have the in house expertise. For the latter, we believe that this issue has been considered and resolved between the NPS and the Office of Solicitor.

We are also providing this Report to you for whatever administrative action you deem appropriate.

If you have any questions, please feel free to contact me at (202) 208-5745.

Attachment



# Investigative Report

## *Point Reyes National Seashore*

Report Date: July 11, 2008  
Date Posted to Web: July 23, 2008

This report contains information that has been redacted pursuant to 5 U.S.C. §§ 552(b)(2), (b)(6), and (b)(7)(C) of the Freedom of Information Act. Some references indicating gender were written in the masculine form to protect the identities of individuals and to facilitate the reading of the report. Supporting documentation for this report may be requested by sending a written request to the OIG Freedom of Information Office.

## **RESULTS IN BRIEF**

In April of 2007, Kevin and Nancy Lunny wrote to us requesting an investigation into the actions of Point Reyes National Seashore (PRNS) Superintendent Donald Neubacher. Specifically, the Lunny family, which owns and operates the Drakes Bay Oyster Company (DBOC) and the G Ranch, both located within the PRNS, alleged that Neubacher had undermined and interfered with the Lunny family's businesses and had slandered the family's name. Further, they believed there was a movement by Neubacher and local environmentalists to shut down the family's oyster farm by crippling the family financially. We opened an investigation shortly after receiving the Lunnys' allegations.

Our investigation determined that PRNS published a report on Drakes Estero, where the Lunny family farms oysters, containing several inaccuracies regarding the source of sedimentation in the estero. After receiving complaints from Corey Goodman, a neurobiologist, NPS removed the report from its Web site on July 23, 2007, and 2 days later, it posted an "acknowledgement of errors" in its place. Our investigation determined that in this report and in a newspaper article, PRNS Senior Science Advisor Sarah Allen had misrepresented research regarding sedimentation in Drakes Estero completed in the 1980s by U.S. Geological Survey scientist Roberto Anima. In addition, we determined that she failed to (1) provide a copy of a germane e-mail message between Anima and herself in response to a FOIA request that specifically sought such correspondence and (2) stated in a public forum that NPS had over 25 years of seal data from Drakes Estero when in fact that was inaccurate.

While Allen denied any intentional misrepresentation of Anima's work, our investigation revealed that Allen was privy to information contrary to her characterization of Anima's findings in the Sheltered Wilderness Report and other public releases, and she did nothing to correct the information before its release to the public.

Additionally, Neubacher and Allen made concerted attempts to refute Kevin Lunny's disputed portrayal of oyster farming as beneficial for Drakes Estero. Our investigation revealed that although Neubacher intended to bring the potential negative effects of the DBOC operation to the public's eye to counter what he considered "misinformation," in several instances he could have exercised better judgment and expressed NPS' position with greater clarity and transparency. Further, he exaggerated the Marine Mammal Commission's role in responding to DBOC's impact on the harbor seal population in Drakes Estero when he spoke before the Marin County Board of Supervisors (MCBS).

Although the complainants provided numerous examples of what they perceived as disparate treatment by Neubacher, our investigation revealed no indication that Neubacher treated the Lunny family with any disparity regarding either of their businesses in the park. We found no indication that Neubacher was planning to shut DBOC down prior to 2012, when DBOC's Reservation of Use and Occupancy (RUO) expires. Further, we found that Neubacher did not have the authority to extend any RUO. In addition, an extension of DBOC's particular RUO would violate a congressional mandate that the oyster operation be removed as soon as the RUO expires in order to manage Drakes Estero as wilderness.

Conversely, our investigation revealed that, until April 22, 2008, Kevin Lunny had been operating DBOC without a Special Use Permit since he bought the oyster operation in 2005 and had refused to sign a permit despite ongoing negotiations with PRNS, the Pacific West Region of the National Park Service (NPS), U.S. Department of the Interior (DOI), and the San Francisco Field Office of the DOI Solicitor's Office. Similarly, his parents had been operating the G Ranch without a signed Special Use

Permit since it came up for renewal in 2004 despite efforts by PRNS to bring him into compliance with federal regulations. According to the Code of Federal Regulations, engaging in any business within a national park is prohibited without a “permit, contract, or other written agreement with the United States.”

This report is being forwarded to the Director of NPS for whatever administrative action for Allen and/or Neubacher she deems appropriate.

## **BACKGROUND**

The Point Reyes National Seashore Act, which was signed into law by President John F. Kennedy on September 13, 1962,<sup>i</sup> made the PRNS the third of fourteen national seashores eventually added to the national park system. The intent of Congress in the passage of the PRNS Act was to preserve the diminishing coastal shoreline.<sup>ii</sup>

As a national seashore, PRNS is managed by NPS and is considered to be one of the most geologically and ecologically diverse parks in the NPS system.<sup>iii</sup>

## **LAND ACQUISITIONS**

### ***Drakes Bay Oyster Company***

Soon after the PRNS Act became law in 1962, NPS officials began the task of acquiring the land designated as the PRNS from private entities and individuals who owned the land within PRNS boundaries. The three primary methods by which NPS purchased this land included the outright purchase of the land, the acquisition of titles with reservations for ranchers to continue working the land, and the exchange of federal lands of equal value elsewhere in California or an adjacent state.<sup>iv</sup>

After a decade of negotiations, Charles W. Johnson, owner of the Johnson Oyster Company, sold 5 acres of onshore property located within Drakes Estero (estuary), located on PRNS, to the NPS in 1972. As a condition of this sale, Johnson agreed to operate on NPS land under an RUO agreement by which he retained the right to use and occupy approximately 1.5 of those acres in order to operate his oyster farm for 40 years, until the year 2012.<sup>v</sup> According to its terms, Johnson’s RUO was “for the purpose of processing and selling wholesale and retail oysters, seafood and complimentary food items, the interpretation of oyster cultivation to the visiting public, and residential purposes reasonably incidental thereto....”<sup>vi</sup>

NPS RUOs are deeded interests in the real estate and by policy cannot be renewed beyond their expiration dates.<sup>vii</sup> In 2005, Johnson assigned the right of the remaining years in this RUO agreement to Kevin Lunny, who renamed the oyster farm the Drakes Bay Oyster Company (DBOC).<sup>viii</sup>

### ***G Ranch***

Beginning in 1947, the Lunny family began leasing the G Ranch (currently located on PRNS) from the Radio Corporation of America, an arrangement that continued until NPS bought the ranch from the corporation in 1974. At that point, the Lunny family began leasing the G Ranch from NPS.<sup>ix</sup>

When the PRNS Act was enacted in 1962, the legislation charged NPS with stewardship of the park to conserve and manage its natural resource and provided funds to NPS to purchase ranch lands and lease the land back to the existing ranch owners.<sup>x</sup>

The PRNS Act states, “The government may not acquire land in the pastoral zone without the consent of the owner so long as it remains in its natural state, or is used exclusively for ranching and dairying purposes.”<sup>xi</sup> When NPS purchased the ranch owners’ land for the creation of PRNS, NPS initially granted RUOs, or in some instances, life estates, to ranch owners who wanted to continue their cattle grazing or dairy businesses. By the early 1990s, the terms of the ranchers’ RUOs began to expire, but due to public support and the legislative backing of ranching activities, NPS supported the continuation of the ranchers’ business operations within PRNS.<sup>xii</sup>

NPS policy does not allow for renewal of RUOs.<sup>xiii</sup> Instead, NPS negotiated renewable leases and grazing permits of 5-year terms with the ranchers, which could be renewed indefinitely as long as the ranch remained a viable agricultural operation.<sup>xiv</sup>

## WILDERNESS ACT of 1964

Public Law 88-544 (Wilderness Act) was signed into law by President Lyndon B. Johnson on September 3, 1964.<sup>xv</sup> This legislation not only protected over 9 million acres of federal land throughout the United States, it also created the legal definition of “wilderness” in the United States as “an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.”<sup>xvi</sup>

The National Wilderness Preservation System (NWPS), created by the signing of the Wilderness Act of 1964, established a process for congressional designation of future acreage of land within the national parks and wildlife refuges. The NWPS directed federal land management agencies to survey their territory and submit their recommendations to Congress as to which land qualified for consideration as wilderness designation, but Congress had the power to bypass agency recommendations.<sup>xvii</sup>

## PRNS WILDNERNESS ACT of 1976

In conformance with the NWPS, in 1964, Stuart Udall, then Secretary of the Interior, directed NPS to evaluate potential wilderness designations of all suitable areas of 5,000 or more continuous acres in all existing NPS units.<sup>xviii</sup> Based on Udall’s directive, NPS studied PRNS, among other areas, to determine the suitability of designating any of its land as wilderness. In late 1973, the NPS PRNS wilderness plan was submitted to Congress with a recommendation that 10,600 acres within PRNS be designated as wilderness and added to the NWPS.<sup>xix</sup> Addressing Drakes Estero, located within PRNS, and the location of DBOC’s operation, the NPS PRNS wilderness plan stated, “In terms of preserving and protecting marine life systems, Drakes Estero and Limantour Estero could well be considered the most significant ecological units within the national seashore.”<sup>xx</sup>

Testimony in public and congressional hearings on NPS’ proposed PRNS wilderness plan favored preserving more PRNS land than was originally recommended by the PRNS wilderness plan. Congress expanded PRNS’ boundaries and increased the acreage initially recommended by the NPS PRNS wilderness plan to 25,370 acres of designated wilderness and identified an additional 8,003 acres as “potential wilderness.” On October 18, 1976, Public Law 94-544 (PRNS Wilderness Act) was

signed into law by President Jimmy Carter, designating much of PRNS' coastal land and water as "wilderness."<sup>xxi</sup>

"Potential wilderness" included the waters of Drakes Estero and the adjoining inter-tidal land upon which DBOC currently operates as a commercial oyster business.<sup>xxii</sup> "Potential wilderness" is defined as "an area which contains lands that are surrounded by or adjacent to lands with the wilderness designation but that do not themselves qualify for immediate designation due to temporary, nonconforming, or incompatible conditions."<sup>xxiii</sup>

The congressional report accompanying the 1976 PRNS Wilderness Act legislation addressing the term potential wilderness states, "As is well established, it is the intention that those lands and waters designated as potential wilderness additions will be essentially managed as wilderness, to the extent possible, with efforts to steadily continue to remove all obstacles to the eventual conversion of these lands and waters to wilderness status."<sup>xxiv</sup>

While most of Drakes Estero has been designated or converted to wilderness status, the acreage used by DBOC remains potential wilderness because the oyster mariculture operation (cultivation of marine life for food) is a nonconforming use that is allowed to operate in PRNS until its RUO with NPS expires. NPS is required to actively seek to remove from potential wilderness the temporary, nonconforming conditions that preclude wilderness designation.<sup>xxv</sup>

## **DETAILS OF INVESTIGATION**

In a letter to the OIG, dated April 23, 2007, Kevin Lunny and his wife, Nancy, requested an investigation of the "conduct, actions and decisions" of PRNS Superintendent Neubacher relative to the DBOC and G Ranch. Along with their letter to the OIG, the Lunny family provided a letter they had delivered to Neubacher, dated April 18, 2007, which addressed the disposition of a Cease and Desist Order that DBOC inherited from the Johnson Oyster Company.

According to their letter to the OIG and an attachment titled, "Statement of Conflict," Neubacher was "undermining Lunny family leases, permits, grants and certifications," "interfering" with the family's ability to do business, and slandering the family's name. Specifically, their letter and statement alleged that Neubacher had harmed their businesses by doing the following:

- Ordering the removal of a sign displaying the oyster farm's hours of operation.
- Prohibiting the Lunny family from doing repair work to the road leading to the oyster farm.
- Planning to oust the oyster farm from the park before their "lease" (Special Use Permit) expired in 2012.
- Denying the restoration of native oysters to Drakes Estero.
- Obstructing their ability to resolve an outstanding Cease and Desist Order issued to the previous owner of the oyster farm (Johnson).
- Asserting that the Wilderness Act mandated that the oyster farm had to leave the park upon the expiration of the "lease" in 2012.
- Applying "punitive" provisions to the Lunny family's "lease" for the G Ranch.

In addition, the Lunny family speculated that NPS was using "selective science" to portray Kevin Lunny as a "bad actor," "environmentally and ecologically."

During his initial interview, Kevin Lunny elaborated that he felt there was a movement by Neubacher and local environmentalists to shut down his family's oyster farm by crippling his family financially. He provided more detailed information on ways he felt NPS had made it difficult to operate a successful business and added that several people told him that Neubacher was determined to shut down DBOC no matter how it was run. Lunny added that opponents of his shellfish operation were using faulty science to vilify him in the media as someone without regard for the environment.

In addition to the aforementioned members of the Lunny family, other individuals who worked on their behalf provided information to us in the form of charts, e-mails, documents, and correspondence at various times over the course of this investigation, most notably Dr. Corey Goodman, a neurobiologist and member of the National Academy of Sciences.

To adequately address all of the pertinent issues that surfaced during this inquiry, a team of Office of Inspector General (OIG) investigators from the Western Region, the Computer Crimes Unit, and the Program Integrity Division worked together to interview 78 individuals from California, Colorado, Maine, and the Washington, D.C., area. We also conducted a voluntary search of NPS Senior Science Advisor Sarah Allen's office, retrieved and analyzed computer files from Neubacher and Allen's government computers, and reviewed over 1,100 documents and e-mail messages.

Based on the initial complaint letter from the Lunny family, and subsequent information we received from Weiman and Goodman on their behalf, we have organized this report into two sections, according to the pertinent allegations: Part I: Scientific Misconduct and Part II: Disparate Treatment.

For the convenience of the reader, at the end of the report, we have provided lists of attachments and names and titles of individuals identified throughout this report.

## PART I: SCIENTIFIC MISCONDUCT

Our investigation into the issue of NPS' potential misuse of scientific data focused only on allegations of scientific misconduct. We did not evaluate the validity of the scientific interpretations made by NPS or by those whose interpretations differed from NPS.

Goodman disputed NPS' portrayal of the potential impact that oyster mariculture (culturing of marine life for food) had on Drakes Estero and its resources. Specifically, he took issue with conclusions regarding oyster mariculture's impact on sediment, eelgrass, and fish composition in the estero that PRNS disclosed in a "Park News" report titled, "Drakes Estero: A Sheltered Wilderness Estuary," which was first uploaded to PRNS' Web site on February 9, 2007. The report was later revised and uploaded to the Web site again on May 11, 2007. Goodman alleged that NPS intentionally misrepresented or omitted scientific data in the Sheltered Wilderness report, in a newspaper article, and before the MCBS in order to convince the public that oyster mariculture negatively affected the estero.

In addition, Lunny and Goodman contested PRNS' characterization of DBOC's impact on harbor seals in Drakes Estero and specifically questioned the authenticity of a "trip report" documenting DBOC employees disturbing seals in April 2007.

We focused our investigative efforts on the information contained in the Sheltered Wilderness report, examining each of the contested conclusions, as well as the questioned trip report and a harbor seal site map that PRNS revised without explanation to Kevin Lunny.

The questions of whether, and to what extent, the oyster operation impacts the natural resources of Drakes Estero continue to be the subject of debate among scientists. To remedy this dispute over the validity of science involving the potential effects of oyster mariculture on Drakes Estero, NPS and the complainants enlisted the help of the National Academy of Sciences, which submitted a two-part proposal to NPS on January 16, 2008, titled, "Best Practices for Shellfish Mariculture and a Scientific Review of Ecological Effects in Drakes Estero, Pt. Reyes National Seashore, California." The National Academy of Sciences proposed to "assess the nature and degree to which commercial mariculture operations affect natural ecosystems" and to "produce a short report on the specific case of a commercial shellfish farm in Drakes Estero that will include an evaluation of the existing body of scientific studies and a comparison to the assessment offered by the National Park Service in public documents and statements." The National Academy of Sciences anticipated that the project would commence on April 1, 2008, and finish on September 30, 2009.

### ***Sheltered Wilderness Report***

Our investigation revealed that Allen and others wrote the Sheltered Wilderness report to counter local newspaper articles, such as one in the *Point Reyes Light* titled, "Drakes Bay Oyster Company has little impact on estero," issued on May 18, 2006. That article presented the findings of a 2005 NPS-sponsored report titled, "Drakes Estero Assessment of Oyster Farming Final Completion Report" (DE Assessment report) that Dr. Deborah Elliott-Fisk of the University of California at Davis (UC Davis) wrote with Allen's input. The report reflected the findings of research done by graduate students Angie Harbin (currently Harbin-Ireland) and Jesse Wechsler, whose master's theses summarized their work in the estero.

The May 18, 2006 *Point Reyes Light* article pointed to the DE Assessment report as support for its conclusion that mariculture "has no statistically significant effects on the estuary's water quality, fish, and eelgrass." The article read, in part:

A century of oyster farming has had much less impact than scientists expected on the ecosystem of Drakes Estero...according to studies completed in the last two years and funded by the National Park Service. Researchers from the University of California at Davis and Park Service employees carried out the two studies, which have not been published and were obtained by The Light this month. Their findings shed new light on the controversy that has gripped West Marin since February, when it was revealed that the Park Service plans to close the oyster farm and convert the estuary to wilderness in 2012.

Lunny was quoted in the article as saying, "There's no way else to interpret that data than that [the oyster farm]'s helping the environment...."

A reporter from the *Point Reyes Light* requested and received the DE Assessment report from a PRNS Marine Ecologist, something Neubacher described in an interview as a mistake.

During his interview, the PRNS Marine Ecologist said, "I just generally share information pretty freely, so it didn't occur to me that it was not a good thing to send it to the reporter."

The day after the article was published, Allen sent the following e-mail message to Dr. Elliott-Fisk, UC Davis:



Check out the article – as is usual, I am misquoted and the article is heavily slanted pro oyster. I stated to them that when your study occurred that the oyster farming was at its lowest level in 30 years, talked about other invasive species introduced by oyster farming, and about the major source for sediment being from oyster feces based on a USGS study, but he chose not to include that information.

A PRNS Ecologist was also unhappy with the article’s portrayal of findings from the DE Assessment report, as evidenced by the following message he sent to Allen on May 22, 2006:

As you can imagine, I have serious problems with how the Light and Kevin Lunny have interpreted Wechsler’s thesis and [Elliott-Fisk’s] final report. As you know, our work in Drakes Estero indicated absolutely no positive influence of the oyster racks on the ecology of Drakes Estero....There are also a couple points in [Elliott-Fisk’s] report that should be corrected. First, [Elliott-Fisk] incorrectly states that ‘exotic, introduced organisms were not definitively found’. *Didemnum* and several other introduced marine invertebrates were definitively [sic] found associated with the oyster racks. Second, although quoted in the Light article, the report inaccurately assesses the impact of the oyster racks on the eelgrass beds. Eelgrass beds are extensive in the Estero, but they do not exist under active oyster racks, presumably due to poor light conditions. This is a localized, but obviously extreme negative impact....

With the Ecologist’s input, Allen began working on a report to counter the conclusions drawn in the article, as indicated by an e-mail message from the Ecologist to Allen on July 18, 2006, and a statement by Neubacher during a local radio program regarding DBOC the following day. In the July 18, 2006 e-mail, the Ecologist wrote the following to Allen:

This version is much more polished and looks really good....Mostly I just want to make [sic] this paper is air-tight – hard facts, lots of references, and little speculation. We have enough knowledge about ecology of the Estero and measured impacts to make a strong case....

During the radio broadcast on July 19, 2006, the next day, Neubacher said Allen had recently put together a paper listing “long term, serious impacts” caused by oyster farming. He subsequently confirmed to the OIG that he was referring to what became the Sheltered Wilderness report during that broadcast. He explained that from NPS’ perspective of “pristine” wilderness, “...somebody coming in and doing a harvesting operation [in Drakes Estero] just intuitively is negative.”

On October 13, 2006, the PRNS Ecologist e-mailed Allen and Neubacher a document he had written titled, “Understanding How Oyster Mariculture Affects the Ecology of Drakes Estero, Point Reyes National Seashore.” He suggested that PRNS upload the DE Assessment Report, the master’s theses by Harbin and Wechsler, and the documents he and Allen had written to give the public “information on what’s really going on” in Drakes Estero. Although we saw no evidence that the Ecologist’s document was ever released to the public, portions of his text were incorporated into the first version of the Sheltered Wilderness report that was first released to the public later that month.

An Adobe Acrobat document (PDF) of the Sheltered Wilderness report was placed on a shared drive of PRNS on October 23, 2006. According to Gordon Bennett, Vice Chair of the Marin Group of the Sierra Club, at some point in the fall of 2006, Neubacher gave him a copy of a report that Bennett described as similar to, if not identical to, the Sheltered Wilderness report. Bennett recalled that he passed out copies of the report to people during a tour of DBOC that Marin Agricultural Land Trust

sponsored in the fall of 2006. *Agent's Note: According to the Fall 2006 edition of the Marin Agricultural Land Trust News, a tour of DBOC was scheduled for October 28, 2006.*

Neubacher said the Sheltered Wilderness report was made available to anyone who wanted a copy when it first came out in the fall of 2006, and there was a stack of copies in his office. Although he did not specifically recall Bennett getting a copy of the report then, he said he was sure Bennett got one because he (Bennett) was very active in local politics in Marin County. Neubacher said he did not ask Bennett to disseminate the report.

In a briefing paper prepared in July 2007, Neubacher described the Sheltered Wilderness report as a "Park News" handout that was produced "in response to public comments about the estuary and the potential wilderness designation." He further described it to OIG agents as a "public information piece" that was not intended to be a "definitive study." As such, he explained, it was subject to less scrutiny than a "scientific paper," and the review of the report was therefore "informal." Allen also described the peer review process for the report as "informal" because it was "Park News."

A Scientist for the Pacific West Region of NPS described the Sheltered Wilderness report as an "interpretative document" that, in his opinion, had "no policy implications" and therefore did not require extensive peer review.

Neubacher explained to the OIG that prior to the issuance of the Sheltered Wilderness report, there was a "dearth of information" from NPS about Drakes Estero and the wilderness legislation, and some people were saying that the estero "wasn't really potential wilderness, which it was." He said PRNS was not attempting to counter the *Point Reyes Light* article but to get "objective information" to the public.

Although Neubacher said he never read that *Point Reyes Light* article and did not direct anyone to rebut it, he remembered talking to a PRNS Ecologist and Allen about "misinformation that was coming out" at one point. He opined that although the *Point Reyes Light* was not very objective, it "...carrie[d] a certain amount of weight in the community, but not a lot." He stated, "I do think we have an obligation to give the public as much good information as we can...we thought we were doing that." He added, "I think what we were trying to do was put out what we consider facts. I know that's being debated now, but that was our intent."

Neubacher stated that the Sheltered Wilderness report was reviewed by several PRNS staff members, including him, before it was released, but nobody gave any indication that they thought it was biased or inaccurate. He said that to his knowledge, from the time the report was made public in October 2006 until the MCBS hearing in May 2007, no one raised any concerns about it or thought it would be controversial.

To understand the issuance of the Sheltered Wilderness report, we examined the DE Assessment report and the events leading to its issuance. In 2001, Allen wrote a proposal for the scientific research project, which culminated in the DE Assessment report.

The first version of the DE Assessment report of March 2005 was labeled "final," but the report was subsequently revised and issued under the same name in May 2005. Although the March 2005 version concluded that Johnson Oyster Company's mariculture operation caused "no significant or negative impacts" to sedimentation or water quality in Drakes Estero and stated that introduced organisms were "not definitively found" in the estero, the May 2005 version concluded the following:

The oyster mariculture has had an impact on the marine fish and invertebrates of Drakes Estero. Invasive organisms as a fouling community, and in particular, the non-native species of tunicate *Didemnum lahillei*, have recruited into the estero.

The PRNS Marine Ecologist said his primary role in the work that culminated in the DE Assessment report was coordinating the logistics of getting boats into the estero for the researchers. He said that after he read the March 2005 version of UC Davis professor Deborah Elliott-Fisk's DE Assessment report, he noted that the researchers had found invasive species on a lot of the oyster racks. He recalled that he told Elliott-Fisk and Allen that he thought they should incorporate that information into the report. He said he did not participate in any meetings with former UC Davis graduate students Angie Harbin-Ireland or Jesse Wechsler to discuss that report.

UC Davis professor Elliott-Fisk verified that she was aware of the May 2005 version and concurred with its conclusions. She explained that during the interim between March and May 2005, she talked to experts about non-native species and realized how "bad" the introduction of non-native species was to the estero. She said that although the researchers could not definitively attribute the invasive species to the mariculture operation, the fact that non-native species existed in the estero was significant enough to document in the report.

Elliott-Fisk stated that no one from PRNS ever indicated that they hoped to find that the oyster operation negatively impacted the estero or tried to influence the researchers to meet any kind of agenda. Likewise, Harbin-Ireland and Wechsler told investigators that no one attempted to sway their results in any way.

John Wullschleger, a fishery biologist with NPS in Fort Collins, CO, said he provided technical oversight to the research that culminated in the DE Assessment report by Elliott-Fisk. Wullschleger said Allen did not send him an electronic copy of the May 2005 report until December 4, 2006, when she e-mailed him a copy of that report along with the Sheltered Wilderness report, which he was not expecting and knew nothing about.

Neubacher said he did not ask Allen to send Wullschleger the Sheltered Wilderness report.

Allen said she sent a copy of the Sheltered Wilderness report to Wullschleger along with the DE Assessment report to "give him more information." Allen sent Wullschleger the following message, with copies of both reports, at that time about the DE Assessment report:

... I have been in a dilemma about the Drakes Estero report. We were going to have it revised because there were recommendations in the final draft that we were concerned about but the report was released to the oyster farmer and a few others (in error) before it was completed and peer-reviewed....We could submit the report as is if you feel alright with that. I also believe that it would be politically difficult to revise it now since it is out already. The oyster operator has been misusing some of the information out of the report to support his position. We have produced a follow [sic] up document summarizing the negative effects of the oyster operation (I attach for your reference)....

Allen explained that the DE Assessment report was sitting on her desk for a "final read through," which she never got to before the PRNS Marine Ecologist released the report to the newspaper. She said Wullschleger, and possibly the PRNS Marine Ecologist, should have had the opportunity to review it before it was finalized.

Wullschleger told the OIG he was concerned about the DE Assessment report because it was “basically trying to make statements from things...that weren’t statistically significant and say, ‘Well, they’re different. So therefore there must be an impact on the estuary.’” He added, “I don’t usually run into that kind of situation because most of the people I work with would say, ‘Yeah, you’re right. You can’t draw those kinds of conclusions from these samples.’” He opined that PRNS was “aiming to find out a little too much in a relatively short period of time with a small amount of money” with the DE Assessment report by Elliott-Fisk.

According to Wullschleger, Allen expressed some concern about Elliott-Fisk’s DE Assessment report, but it was not clear to him whether she had problems with the way it was written or with the content of the report. He said she did not express any disappointment to him about the lack of conclusive findings the research produced, and she did not elaborate on how the report was released to the oyster farmer “before it was completed and peer reviewed.”

Wullschleger responded to Allen on February 6, 2007, with the following message about Elliott-Fisk’s DE Assessment report:

I’m not sure whether my input at this late date is of any value, especially if it is no longer feasible to revise the report. However, I do have some concerns with the the [sic] conclusions as written....Given that sample sizes were small and that most results were not statistically significant, I was surprised that the conclusions section began with the relatively strong statement ‘...oyster mariculture has had an impact on the marine fish and invertebrates of Drakes Estero’.... Although not well defined by NPS, the word impact is typically used to indicate an effect that is not only negative but substantive in magnitude. While I think that most would agree that any departure from natural conditions in an NPS natural area proposed for wilderness designation is negative, it seems clear that we are not in a position to quantify the effects of oyster culture on the Estero based on the results of this study.... I can see how the oyster grower could point to this [DE Assessment] report as evidence that their operation is not having an impact on the aquatic communities of the estero. After all, only one of the differences associated with the oyster racks was statistically significant.

Three days later, on February 9, 2007, the Sheltered Wilderness report, which drew upon the DE Assessment report, was uploaded to PRNS’ Web site for the first time.

A Scientist for the Pacific West Region of NPS, opined that in the Sheltered Wilderness report, Allen and “probably her colleagues” had “drawn conclusions...that simply cannot be sustained, particularly since there was something a little bit sketchy about the Elliott-Fisk paper,” which “...itself was overreaching.”

Goodman questioned Allen’s characterization of the impact oyster farming had on the ecological resources of Drakes Estero in the Sheltered Wilderness report. Specifically, he scrutinized her portrayal of oyster farming’s impact on sediment, eelgrass, and fish composition in the estero.

#### *Impact of Oyster Feces on Sedimentation*

Corey Goodman was particularly critical of the way Allen portrayed research by U.S. Geological Survey Scientist Roberto Anima in the Sheltered Wilderness report and in a column that Allen co-authored in the April 26, 2007 edition of the *Point Reyes Light*. Goodman surmised that Allen could

be a “zealot” when it came to protecting the estero or that Neubacher may have “pushed her” to skew the science against DBOC.

As a graduate student in the 1980s, Anima conducted research in PRNS that resulted in two reports, both of which were titled, “Pollution Studies of Drakes Estero and Abbotts Lagoon.” One of his reports was produced for NPS in 1990, while the other was produced for the USGS in 1991 as “USGS Open File Report 91-145.” Anima recalled that he met Allen in the 1980s when he began conducting research in Drakes Estero for his master’s thesis while she was studying the migration patterns of seals for her master’s thesis. The research he conducted in the estero culminated in the 1990 NPS report and the 1991 USGS report.

Anima explained to the OIG that he did not “directly” study oyster feces, but he “made some observations” about oyster feces while diving in the estuary. He explained that he noted “fine grain material” on the “leeward” or “down current” side of the oyster racks that inspired him to review previous studies of oyster feces and pseudofeces. His report never said that oyster feces was affecting the sedimentation in Drakes Estero but rather reflected that studies done elsewhere indicated that oyster waste was a factor in sedimentation in those bodies of water. He recommended that similar studies be done in Drakes Estero. According to Anima, Allen did not speak to him before referencing his work in the Sheltered Wilderness report.

A comparison of the Sheltered Wilderness report, which was primarily written by Allen and was uploaded to PRNS’ Web site on February 9, 2007, to the 1990 Anima report Allen referenced therein revealed the following discrepancies:

On page 10, Allen wrote the following:

USGS (Anima 1990) collected sediment cores from the estero and identified pseudo feces of oysters as **the primary source** for sediment fill, as has been seen in studies elsewhere. **An estimate of 0.6 to 1.0 metric tons of fecal matter can be produced per year by a 60 meter square oyster raft.** This sediment material is resistant to erosion because oyster racks are located in upper reaches of the estero where tidal action is lowest and the arrangement of **the oyster racks acts as a ‘baffle to tidal currents where rack density is highest...silt material accumulates on the leeward side of stacked oyster beds’**(Anima 1990).” [Emphasis added]

Later, in the Synopsis section of that same draft Allen wrote on page 14:

A USGS researcher stated that **a primary source** for sediment fill in the estero was from oyster feces and from structures trapping sediment. [Emphasis added]

In a subsequent version of the Sheltered Wilderness report that was uploaded to PRNS’ Web site on May 11, 2007, the word “primary” was dropped from the above sentence to reflect that Anima had identified oyster feces as **a source** for sediment fill.

Contrary to Allen’s assertion that Anima identified oyster pseudofeces as *the* primary source or *a* primary source for sediment fill, page 147 of Anima’s 1990 report actually stated the following:

Because they are filter feeders, the oysters being grown and harvested in the estero **could be playing an important role** in the deposition of fine grained sediment. [Emphasis added]

As written in the Sheltered Wilderness report, Allen's reference to the volume of fecal matter that can be produced per year may have seemed specific to Drakes Estero. However, page 147 of Anima's 1990 report indicates that this estimate was actually based on a 1955 study done in Japanese waters:

Ito and Imai (1955) calculated that in **Japanese** waters a raft of oysters 60 m square would annually produce 0.6 to 1.0 metric tons (dry weight) of fecal material. [Emphasis added]

In addition, Allen presented Anima's quote about the racks acting as a baffle (obstructing device) to tidal currents in a decisive manner, but Anima's full quote on the subject is speculative.

Allen said that although it may have been confusing not to specify that the estimate of annual fecal matter production was drawn from a Japanese study, she had no intention to mislead anyone. Allen told investigators that she had had conversations with Anima in the 1980s during which he had said the oyster racks were trapping sediment. She said, "If you put structures into an estuary and you have tides going in and out, it's going to trap sediment."

When interviewed, Anima agreed that, as written in the Sheltered Wilderness report, Allen's use of the estimate of how much waste oysters could produce in a year seemed attributable to Drakes Estero even though he attributed that estimate to a study done in Japan. Anima also contended that a partial quote Allen used in her report about oyster racks acting as a "baffle to tidal currents" was problematic because his report stated that the arrangement of oyster racks *appeared* to be serving as a baffle.

In September 2006, PRNS sent a letter to the California Department of Health Services (DHS) to address "incomplete" or inaccurate information contained in a draft "sanitary survey" report that a DHS Environmental Scientist had written pertaining to Drakes Estero.

The letter also referenced Anima's work and contained the following sentence, which Allen wrote: "Anima (1991) stated that the presence of the oysters and their feces were the primary source of sedimentation...."

The DHS Environmental Scientist said he told Allen in a telephone conversation in approximately October 2006 that Anima had not tested any correlation between sediment and oyster feces in Drakes Estero. Although he could not remember, specifically, how Allen responded to his comment, he thought Allen had said something like, "Oh. I didn't know that." He said he and Allen did not debate the issue.

Allen said she "vaguely" remembered the DHS Environmental Scientist's comment about Anima's study and that she was surprised by it. Allen recalled "trying to track down the reference so I could look at it more closely." She stated, "I remember flagging a couple pages [of Anima's report] where he had talked about the oyster feces and pseudo feces....But I just don't remember more than that...." When asked if she had then determined that she was not correct to state that Anima had determined oyster feces was the primary cause of sedimentation, she replied, "I don't remember, but I would assume so if I read it correctly. I look at it now, and I see it's an important source. It's not the primary source. I mean, that's the difference. It's an emphasis of degree."

Allen said she would have corrected the Sheltered Wilderness report if she had known it was incorrect at that point, but she did not realize that it was incorrect then. She stated, "There was no intent here to obfuscate that. If I had read [Anima's report] correctly ... I would have put it correctly in." According to Allen, the report by the DHS Environmental Scientist contained a lot of incorrect information that

Allen was focused on correcting in a response to the California Department of Health Services at that time; the Sheltered Wilderness report was not her primary focus.

Allen stated that she first realized how she had misstated Anima's work about sedimentation after Corey Goodman brought up the issue at the MCBS hearing in May 2007. She recalled that she reviewed Anima's studies then and realized that she had "blundered" and felt like she had let Neubacher down by her mistake.

Neubacher recalled that Allen was "very frustrated" after speaking with the DHS Environmental Scientist because she felt DHS' report was not well done, but he did not know that the DHS Environmental Scientist had contradicted Allen's interpretation of Anima's work at that time.

A Research Cooperative Extension Specialist with UC Davis said he reviewed a draft of the Sheltered Wilderness report in October 2006. He said he acted as an objective consultant who provided expertise regarding coastal natural resources in California to private, local, state, and federal entities. On October 23, 2006, the day the Sheltered Wilderness report was placed on a shared drive at PRNS, he e-mailed the following statement to Allen, on which he copied the PRNS Marine Ecologist:

Siltation is really a problem around the racks, but you should be careful not to make it sound like this occurs throughout the estuary. Towards the mouth there will be fewer finer sediments. Make sure to build a strong case where you have it, but don't oversell it.

Allen said she did not remember this message or what precipitated it. She also could not recall whether anyone had provided her feedback specifically related to the oyster feces as the primary source of sedimentation when some of her coworkers reviewed the draft.

The Research Cooperative Extension Specialist explained that he was recommending that Allen reconsider using broad language such as "significant impact on the estuary" in her report, because in his opinion, her statements about siltation having a negative impact on the overall estuary was too broad and could weaken her stronger case that "siltation" occurred within the immediate vicinity of the oyster racks.

In the same message, he also wrote the following:

Overall, I think this document makes a strong case for designation as wilderness....And I understand the desire to get rid of the oyster farming once the lease expires. The presence of oyster farming certainly has negative effects on the estuary. It is clearly increasing the abundance of invasive species and decreasing (at least in the immediate area) the abundance of key taxa like bivalves, eelgrass, etc. I think you make these points well but be careful about pushing some of these points too hard. Especially given [Harbin's] thesis, it's a fairly preliminary data set .... It's not a case that can be made conclusively, but is a strong case based on the evidence currently in hand.

The Research Cooperative Extension Specialist explained that NPS' mission was to protect the estuary and natural resources of Drakes Estero and that as an NPS employee with that objective, Allen concluded in that report that oyster farming had a negative impact on the estuary. He added, "Bringing together what is known regarding how oyster farming has a detrimental impact on eelgrass, seals, and shellfish, sedimentation etc., Allen's report made a strong case for meeting NPS' objective of designating the estuary as wilderness in 2012." However, he opined that there was not enough

scientific data to conclusively determine whether oyster farming had a negative impact on Drakes Estero or not.

He explained that NPS was regularly asked to make decisions based on inadequate and limited scientific data, a belief that was shared by Neubacher, Allen, and a Scientist in the Pacific West region. The Research Cooperative Extension Specialist opined that the statements Allen made in the report were erring on the side of caution in order to protect the natural resources of Drakes Estero before any damage could be done. He said that although the preponderance of available research suggested that oyster farming had a negative impact on Drakes Estero, Allen primarily relied on Harbin's master's thesis. According to him, Harbin's thesis was "weak and not very well thought out." He stated that her thesis should have been viewed only as a reference document rather than a credible peer-reviewed scientific study.

As previously noted, Allen presented Anima's quote about the racks acting as a baffle to tidal currents in a decisive manner, but Anima's full quote on the subject is speculative. Still, NPS concluded that oyster racks "act as a baffle" in a letter to Senator Dianne Feinstein, dated October 26, 2006, which read, "The oyster bags and racks placed on sandbars in the bay act as a baffle and trap sediment."

Further, Anima's statements that the effects of oyster mariculture on sediment in Drakes Estero required further study were omitted from both versions of the Sheltered Wilderness report that were released to the public. Beginning on page 150 and continuing on page 153 of his 1990 report, Anima wrote the following:

The methods used by the oyster industry in Drakes Estero **appear to be serving as a baffle** to tidal currents in those locations where rack density is highest, i.e., mouth of Creamery Bay, Schooner Bay, and Home Bay, **what the results of this is needs further study**. It has been observed that silt size material accumulates on the leeward side and/or down current side of the staked oyster beds. **Further study needs to be done** to ascertain what effects the methods and the large numbers of oysters, oyster racks, and staked oyster beds are having on the sedimentological makeup of the estero. [Emphasis added]

On page 148 of the same report, Anima wrote another reference to the matter requiring further study:

The abundance of native filter feeders combined with the introduced oyster in Drakes Estero **raises questions of the impact the industry is having** to the sedimentation rate of the lagoon. **More research needs to be conducted to ascertain what amount of silt size material is being produced by the oysters being grown in Drakes Estero**. [Emphasis added]

In another example of omission, Allen did not include the following statement regarding the impact of oysters on sedimentation, drawn from the DE Assessment report, in either version of the Sheltered Wilderness report:

Although pseudofeces from the suspended oysters may contribute to the amount of organic matter below the racks, adding to the system, the amount of organic matter resulting from eelgrass decomposition is likely far greater considering how expansive and dense the beds are within the estuary, making any significant organic inputs from the oysters undetectable in this study (Harbin 2004).



Likewise, the following statements that Elliott-Fisk wrote in the DE Assessment report in reference to Harbin's thesis were not addressed in the Sheltered Wilderness report: "The amount of organic matter in sediment from adjacent areas was not found to be significantly different from that beneath racks," and "A significant difference in the percent [sic] organic matter in areas below and adjacent to the oyster racks was not detected...."

NPS removed the Sheltered Wilderness report from the PRNS Web site on July 23, 2007. Two days later, NPS posted an "acknowledgment of corrections" statement on the site in which NPS addressed misrepresentations of Anima's work in the Sheltered Wilderness report. The acknowledgement stated that NPS had "incorrectly interpreted" the 1990 report by Anima by stating that Anima had "detected oyster feces and pseudofeces in sediment core samples," that he had "estimated the amount of fecal matter produced by oyster rafts," and that he had "considered oyster farming as the primary source of sedimentation in the estero."

To address some of the issues raised by the complainants, NPS produced a document titled, "National Park Service Clarification of Law, Policy, and Science on Drakes Estero" (Clarification Statement) in September 2007. In reference to the above supposition, that document stated, "...despite suggestions that decomposing eelgrass was a key source of sediment organic matter, no quantifiable evidence was presented to support this claim."

In its Clarification Statement, NPS specified that in his 1991 report, Anima wrote the following:

Because they are filter feeders, the oysters being grown and harvested in the estero play **an important role** in the deposition of fine grained sediment....The combination of abundant native filter feeders and the introduced oyster raises questions of the impact the industry is having to the sedimentation rate of the lagoon. [Emphasis added]

In that statement, NPS acknowledged that Anima "did not quantify sedimentation related to the oyster farming" but said he "provided expert opinion in the report that the sediment material was likely resistant to erosion because oyster racks were located in the upper reaches of the estero where tidal action was limited." NPS also specified that the estimate of how much fecal matter an oyster raft would produce annually that was referenced in the Sheltered Wilderness report was drawn from a 1955 Japanese study.

Anima told OIG investigators that Allen did not consult him before citing his work. Anima said that when Allen first called him in May 2007, she asked him to read two newspaper articles in which his work was referenced. Anima recalled that one of the articles came from the *Point Reyes Light*, but he could not remember the source of the other article. After reading those articles, Anima told Allen that his report did not state that he had "collected sediment cores from the estero and identified pseudo feces of oysters as the primary source for sediment fill." He said he was "tick[ed]... off" that she had misrepresented his findings that way.

*Agent's Note: Both the article titled, "Coastal Wilderness: The Naturalist," which Allen co-authored in the Point Reyes Light in April 2007, and an editorial piece titled, "Save Drakes Estero," published in the Coastal Post as a "collaborative effort" by various conservation groups on May 2007, refer to oyster feces as the primary cause of sediments in the estero).*

Anima said he let Allen know that he was "not happy" with her portrayal of his research. According to him, she did not offer a "good justification" for inaccurately referencing his work. She told him that she remembered him voicing concern about oysters contributing to sediment in a portion of Drakes

Estero known as Abbott's Lagoon during a conversation they had with a USGS Scientist in the late 1980s. He recalled that she tried to justify her actions by telling him about an agreement NPS had with the oyster company, which had been sold to a new owner. She explained that the current owner of the oyster farm wanted to extend his lease with NPS when it expired and that PRNS was trying not to allow the extension of that lease.

Anima said that during one of their conversations, he told Allen that he wished she had let him review his work before she used it in any way. According to Anima, Allen replied, "I know, Roberto. This is getting ugly." He said she mentioned to him that "hindsight is 20/20." Anima could not say that Allen personally had "an agenda" but opined that she had "stretched" his research.

Anima recalled that Allen reiterated her claim that day that Anima, the USGS Scientist, and she had had a conversation several years ago during which she believed Anima had said the primary source of sedimentation in the estero was oyster feces. Although Anima said he did not remember that particular conversation, he did recall having several conversations about the estero with the USGS Scientist during the time he (Anima) was gathering data for his master's thesis. During this final interview of Anima, he said he considered Allen a "friend" whom he "can't condemn" for misquoting him. He referred to her as a "very capable" scientist and said that she had apologized to him many times for "dragging" him into this conflict.

Allen told investigators that at some point during the 1980s, Anima told her the Johnson Oyster Company played an important role in sedimentation in Drakes Estero. She said that after the MCBS hearing, Anima told her she could quote him as concluding that the oyster operation played an "important" role in sedimentation but not a "major" role.

The USGS Scientist could not recall having a conversation with Anima and Allen in the 1980s such as Allen described, but he could not be certain that such a conversation did not take place. He thought it was "likely" that the three of them had conversations about the impact of oyster farming on the estero. He said he had not read Anima's thesis in over 10 years and could not remember if Allen asked him to look over the Sheltered Wilderness report before it was uploaded to PRNS' Web site. However, he said he would review "a huge number of documents," so it was possible that he may have reviewed it prior to its release on the Internet.

After speaking with Anima concerning Allen's misuse of his (Anima's) research, Corey Goodman was under the impression that Allen had called Anima and his supervisor, USGS Scientist Janet Thompson, to discuss the way she (Allen) had portrayed Anima's research, which angered Anima. Thompson said she had never supervised Anima. Anima identified Samuel Johnson and David Rubin as his supervisors, both of whom did not recall anyone from PRNS contacting them about Anima's research in Drakes Estero.

During an interview with the OIG in which he was placed under oath, Neubacher said he first learned of the potential problems with the Sheltered Wilderness report at the MCBS hearing in May 2007, when Goodman quoted Anima's work. He recalled that soon after that hearing, he looked at one of Anima's reports, which indicated that oyster feces play an "important role" in sedimentation. At the time, he "honestly didn't think it was a big deal" that the Sheltered Wilderness report indicated that oyster feces was the primary source of sedimentation, but he and Allen intended to "fix" the Sheltered Wilderness report.

He said they planned to upload a corrected version of the report to the PRNS Web site in late June or early July 2007, after Allen had spoken to Anima about his work, but Holly Bundock, NPS Pacific

Regional Director of Public Affairs, and Jon Jarvis, Director of NPS' Pacific West Region, did not want PRNS to upload another version of the report before a meeting scheduled with Senator Feinstein to discuss it in July 2007, during which the decision was made to remove the report from the Web site.

According to Neubacher, Allen was "devastated" that she had made mistakes in the Sheltered Wilderness report. He said, "It was just an honest mistake on her part."

Allen was adamant that no one tried to influence her to leave faulty information in the report.

A USGS Scientist, a PRNS Marine Ecologist, a PRNS Ecologist, and Gordon Bennett, Vice Chair of the Sierra Club's Marin Group, all said Allen had told them she had made a mistake in the way she represented Anima's research.

The PRNS Ecologist recalled that although he had read the sentence Allen had written about oyster feces being the primary cause of sedimentation in the estero in a draft of the Sheltered Wilderness report, the sentence "didn't jump out" at him as being incorrect, even though he was familiar with Anima's report. Since he knew that Anima had written about "oysters and ... feces," he said he assumed that Allen must have gotten it "right."

In April 2007, Allen co-authored a *Point Reyes Light* column titled, "Coastal Wilderness: The Naturalist," which stated that oyster feces, which "smothers" native species, is the primary source of sediment in the estero. The other authors of that column, John Kelly, the Director of Conservation Science and Habitat Protection at the Cypress Grove Research Center, and Jules Evens, a self-described "naturalist and biologist," told investigators that Allen was the primary author of the column, a fact that Allen confirmed. Allen conceded that she was the one who made the reference to oyster feces as the primary source of sedimentation in the estero in the article and said the quote about the waste smothering species was something she had learned from talking to USGS Scientist Janet Thompson.

Thompson corresponded with Allen about the potential effects of oyster mariculture on Drakes Estero and subsequently sent a letter to Allen on May 7, 2007, the day before the MCBS hearing, detailing her expert opinion. Thompson's letter to Allen reads, "If the mass [of feces] is high, bacterial reduction of the organics can reduce the oxygen content of the sediment.... This type of fecal pellet sequestration to the sediment... is likely to be most extreme under bags that lay on the sediment surface and therefore present a barrier to... aeration of the sediment surface." **Agent's Note:** *Although the letter reflects a date of May 7, 2006, the correct date for it is May 7, 2007, per Thompson.*

According to Allen, Neubacher and probably John Dell 'Osso, the Public Information Officer for PRNS, reviewed the article before it was published. Neubacher confirmed that he reviewed the article before it was published but said he did not ask Allen to write it and had no reason to think it would be controversial at that time.

Allen offered that she was upset and distracted at work by two events that occurred in 2005 and 2006 as a possible explanation for her errors. She recalled that her brother had died in 2005 and that her friend's baby had died in 2006. Additionally, she stated the following:

I think that I put a lot of emphasis on my early discussions with Roberto [Anima], and I think that influenced how I was viewing things... When [Anima] was doing his master's thesis, he was very upset about the effects of the oyster operation on Drakes Estero, and he talked about the effects of sedimentation....

She added, “So, I feel, if anything, that tainted how I was viewing things, those earlier discussions. But there was no intent. There was no intent.”

*Impact of Oyster Mariculture on Eelgrass*

In addition to the misrepresentations of Anima’s work regarding oyster feces, the complainants opined that the following statement, drawn from the first version of the Sheltered Wilderness report, was not supported by the references cited therein:

Although eelgrass cover has not been quantitatively measured in Drake’s [sic] Estero, **UC Davis researchers working in co-operation [sic] with the NPS have all qualitatively noted that eelgrass growth is severely restricted under active oyster racks in Drake’s Estero.** (Harbin-Ireland 2004, Wechsler 2004, Elliott-Fisk et al. 2005). [Emphasis added]

Essentially, that same statement was incorporated into the Sheltered Wilderness report from the August 2006 document that a PRNS Ecologist prepared to counter the *Point Reyes Light’s* portrayal of the DE Assessment report. Allen confirmed that she cut and pasted essentially the above statement and some of the Ecologist’s other work into the Sheltered Wilderness report.

Substantially, the same quote appeared in the updated version of the Sheltered Wilderness report in May of 2007. The only difference in text was the omission of the word “all,” so that the quote read, “UC Davis researchers...have qualitatively noted....”

As Goodman noted, Elliott-Fisk wrote the following sentence in both the March and May 2005 versions of the DE Assessment report, which contradicts the Sheltered Wilderness report:

We found the oyster racks to also have **no pronounced impacts** on the eelgrass beds, which existed both under and away from the racks as an incredibly rich habitat type. [Emphasis added]

In its Clarification Statement, NPS explained that Elliott-Fisk had misrepresented the graduate students’ findings in the DE Assessment report. The Clarification Statement addressed the issue as follows:

Elliott-Fisk, the primary author, apparently contradicted her research staff that published qualitative statements that eelgrass growth was very limited under the oyster racks (Harbin-Ireland 2004, Wechsler 2005). The NPS regrets that it did not discover the inconsistency between Elliott-Fisk’s comment and the results reported by these two studies when reviewing the final draft of Elliott-Fisk et al. (2005).

Former UC Davis graduate student Angie Harbin-Ireland said she completed her research on the estero in 2001 and was not familiar with the Sheltered Wilderness report. She said she did not feel that she had made enough observations of eelgrass in the estero to determine whether it was accurate to characterize eelgrass growth as “severely restricted” beneath active oyster racks, as indicated in the Sheltered Wilderness report. She wrote the following in her thesis:

The eelgrass beds within the sampling areas in Schooner Bay were observed to be quite dense during the growing seasons preceding sample collection, and they were noted to be growing densely right up to the margins of the oyster rack structures. **Little eelgrass was**

**observed growing beneath them, likely due to shading from the structures.**  
[Emphasis added]

In reference to that quote from her thesis, Harbin-Ireland said, "...I guess if I wrote it in there, it must have been based on my field notes. But it's been a while since I was out there, so I don't remember it specifically." When asked to comment about Elliott-Fisk's conclusion that the researchers found "no pronounced impacts" on eelgrass beds, Harbin-Ireland stated, "That may not be an accurate statement..." She explained that since eelgrass was "not the focus" of her study and since she had not collected "empirical data" on it, she had not drawn any "real conclusions" about potential impacts to eelgrass.

In the Synopsis section of the Sheltered Wilderness report, the statement about eelgrass being "severely restricted" under active oyster racks was tempered with the following statement:

Eelgrass beds are found in all suitable habitats within Drakes Estero, except for between active oyster racks, where they do not exist due to shading effects.

Former UC Davis graduate student Jesse Wechsler told the OIG that he agreed with the statement in the Sheltered Wilderness report that the researchers had qualitatively noted that eelgrass growth was severely restricted under active oyster racks, and he disagreed with Elliott-Fisk's statement in the DE Assessment report that the oyster racks had "no pronounced impacts on eelgrass beds..." Therefore, he agreed with NPS' Clarification Statement that Elliott-Fisk had apparently contradicted her research staff regarding their observations about eelgrass growth in the estero.

Although Elliott-Fisk initially characterized the Sheltered Wilderness report as "all accurate," she expressed surprise that the statement about eelgrass growth being "severely restricted" was in the report and thought it must have been included in error. Elliott-Fisk contended that the racks did not have a "pronounced effect" on eelgrass. She agreed that the racks reduce the amount of light available to the eelgrass. She explained, "So probably the eelgrass is less productive as a green plant with less light, but we know it's still growing [under the racks] because when we were out there, we saw it." She added that the only "real impacts" she saw due to the oyster operation were tracks through the eelgrass caused by boat propellers.

The PRNS Marine Ecologist said he assumed that the DE Assessment report reflected that there was no eelgrass growing under the oyster racks and was therefore not in conflict with the Sheltered Wilderness report on that subject. He advised that he and a PRNS Cartographic Technician surveyed eelgrass in Drakes Estero in March 2007. At that time, he said he personally observed that "in most cases, there wasn't eelgrass under the racks..." In his opinion, there was "definitely" an impact on eelgrass under the oyster racks.

Allen said the "only point" she was making about eelgrass in the Sheltered Wilderness report was that it did not grow under oyster racks. She said what was important to know was that the oyster operation negatively affected eelgrass; the quantity of the eelgrass affected was not the main issue. She stated that it was clear that the oyster operation affected the eelgrass, and NPS and DBOC had to mitigate those effects.

#### *Impact of Oyster Mariculture on Fish Composition and Non-Native Species*

During the radio broadcast in July 2006, Allen said the most important impact to the estero due to oyster farming was the introduction of non-native species, particularly the *Didemnum tunicate*

(commonly referred to as “sea squirts”). She added that the oyster operation created structure in the estuary that normally would not be there, the presence of which changed fish diversity and abundance.

In the October 2006 version of the Sheltered Wilderness report, Allen wrote the following:

Oyster racks create habitat in the estero by acting as a hard substrate in an ecosystem composed of predominantly soft-bottom substrate. This direct change in habitat substrate significantly alters the native species composition and abundance, and provides habitat for non-native species.

In that same report, Allen also wrote the following in the Synopsis section:

Invasive organisms were found on the hard substrates provided by the oyster racks in Schooner Bay. These organisms were not present in Estero de Limantour where no oyster facilities exist....

Corey Goodman pointed out that in the April 2007 “Coastal Wilderness: The Naturalist” column, Allen and her co-authors claimed, “One highly invasive non-native species, a sponge-like colonial tunicate...is now commonly found on oyster racks and shells in the Estero and could substantially alter the ecology of the estuary.” Goodman added that the tunicate “is found nowhere other than Lunny’s oyster racks” and that the tunicate “can not [sic] and has not spread to any other substrate in the Estero.”

During the May 8, 2007 MCBS hearing, Goodman stated that since the invasive colonial tunicate was only present on the oyster racks in the estero, it only posed a problem for Lunny since he might need to replace the racks in the future. Subsequent to that hearing, in the May 11, 2007 version of the Sheltered Wilderness report, NPS added a photograph demonstrating that, in addition to being present on the oyster racks, the tunicate was also attached to hard substrate in the Bull Point area of Drakes Estero. After that version of the report was released, Goodman no longer contended that the tunicate was only present on oyster racks in the estero.

Regarding Wechsler’s research on the fish composition of the estero near and away from oyster racks, Allen wrote in the Sheltered Wilderness report the following:

The species richness of fish (the number of species) was the same between Estero de Limantour and Drakes Estero, but the species guilds were different. **Schooner Bay where there are many oyster racks supported a completely different fish community than...Estero de Limantour where no mariculture occurs.** Wechsler (2004) concluded that the diversity of fish species was enhanced by the presence of the oyster rack structures (or any hard substrate); however, his sample size was small and he was not able to sample eelgrass beds thoroughly because of logistical difficulties. Consequently, he may have missed species that are dependent on eelgrass. **Surprisingly, Wechsler (2004) detected few herring, even though this species was historically found in high numbers and spawns in eelgrass beds** (Blunt 1984). [Emphasis added]

Goodman opined in his letter to the MCBS that Allen’s conclusion about Schooner Bay supporting a “completely different fish community” than Estero de Limantour was false, a point with which Wechsler concurred. Goodman noted that Wechsler’s thesis actually contained the following statements, which were confirmed by the OIG: “Similar numbers of eelgrass dependent fish were observed in all sites,” and “I found no statistically significant differences in fish abundance or species

richness among the sampling locations, which indicated that the oyster farm had not exerted a noticeable effect on the ichthyofauna of Drakes Estero.”

Goodman also called Allen’s quote about herring into question and described NPS’ decision to mention the lack of herring by the oyster racks without offering a possible explanation for it – “a case of selective omission.” He wrote the following:

Thus, the herring are mentioned as something that Wechsler should have found, but did not, suggesting trouble with the eelgrass beds .... Because most of his samples were outside the seasonal ... period in which schools of herring enter the Estero to spawn, Wechsler missed the herring season altogether. He trapped only one herring in Limantour (the estero without oyster racks) and none in Drake’s [sic] Estero.

Wechsler told the OIG that he did not know enough about herring to know whether he missed their spawning season.

NPS conceded in its Clarification Statement that there were “several inconsistencies” between “Wechsler’s results” and the Sheltered Wilderness report. NPS elaborated in the statement, as follows:

In summary then, Wechsler’s thesis indicates that when he conducted his study prior to DBOC’s operations, mariculture in Drakes Estero had no measurable effects on fish species abundance, diversity, or richness, but may have had an effect on fish composition....Oyster racks appeared to favor structure oriented fish; however, determining effects on fish composition within Drakes Estero by the current elevated level of oyster operations would require a more focused study.

Wechsler concurred with the points made about his research in the Clarification Statement but had no knowledge about the current level of oyster operations.

Goodman referred to the first half of Wechsler’s hypothesis to demonstrate his contention that, as a former NPS employee, Wechsler had a “potential bias.” As noted by Goodman, Wechsler wrote in his thesis the following:

Because studies have shown that bivalve mariculture can affect the biological, physical, and chemical characteristics of an aquatic ecosystem, I hypothesized that adjacent to Drakes Estero oyster racks: (a) fish species diversity would be reduced, (b) fish abundance would be reduced, (c) fish species richness would be decreased, and (d) a few tolerant species would dominate the fish community.

Goodman described the above clause as “the hypothesis that the [PRNS] apparently hoped [Wechsler] would confirm.” However, the next sentence in the same paragraph of Wechsler’s thesis stated the following: “Alternatively, since the presence of bivalve filter feeders may bolster productivity and provide aquatic habitat, abundance, richness, and diversity of fishes may have increased.

NPS made the following statement about Wechsler’s work in its July 25, 2007 “acknowledgement of corrections”:

The NPS incorrectly interpreted that the Estero de Limantour supports a different fish community than Schooner Bay. To clarify, the fish found at sampling sites in Estero de Limantour were most different from sites associated with the oyster racks in Schooner

Bay, not the entirety of Schooner Bay. Although not tested for statistical significance, Wechsler reports that, 'Four of the five indices used to assess the similarity of the fish assemblage showed the greatest compositional divergence was between Estero de Limantour and Schooner Adjacent.'

### ***Harbor Seals in Drakes Estero***

In addition to the concerns he had about the Sheltered Wilderness report, Goodman took issue with statements Neubacher and Allen made before the MCBS on May 8, 2007. One of the topics addressed during the hearing was DBOC's continued operation in PRNS, which the county fully supported. Goodman opined that Neubacher and Allen exaggerated DBOC's impact on harbor seals in Drakes Estero when they spoke at the hearing. Goodman also questioned the veracity of a trip report in which Allen documented her observations of the estero on April 26, 2007, and alleged that NPS had redrawn the areas on a map where the seals pulled themselves out of the water (haul-out sites) to reflect that oyster bags were in prohibited areas where the seals gave birth (pupping areas) when they actually were not. We did not attempt to determine whether DBOC was disturbing seals or encroaching on their habitat in the estero. We examined the accuracy of statements that Neubacher and Allen made before the MCBS, the veracity of the April 2007 trip report, and the complaint about NPS redrawing the boundaries of harbor seal sites.

#### *Statements before the MCBS on May 8, 2007*

With regard to the statements made to the MCBS on May 8, 2007, Allen told us that prior to that hearing, she told Timothy Ragen, Executive Director of the Marine Mammal Commission, that the oyster operation had been discarding oyster bags on the beach where the seals gave birth, thus impacting their habitat. She said she asked Ragen if the Marine Mammal Commission would consider writing a letter raising questions about the farm's impacts on the seals.

During the hearing, Allen explained how the Marine Mammal Commission was involved in the matter by stating the following:

This issue has been received and recognized by the Marine Mammal Commission and we received a fax today from the Executive Director of the Marine Mammal Commission, because they had just heard about this, which I will provide to you. And they're going to bring it up in their next commission meeting, because it has national significance.

During an interview with us, Ragen offered the distinction that the Marine Mammal Commission had been informed about the issue as opposed to Allen's portrayal that it had "received and recognized" the issue. He stated that Allen could have reasonably interpreted that the impact on the harbor seal habitat was of "national significance," as she said during the hearing, based on conversations he had had with her.

Neubacher told MCBS the following about the seal population during the hearing:

... we believe because of recent actions taken...that the harbor seal pupping area in Drakes Estero is seriously threatened right now. And Dr. Sarah Allen is going to discuss this, but we have some major problems because you can see...that bags recently have been in pupping areas. And Sarah will give you the statistics, but it's amazing how many pups we have probably lost this year. So we've got a serious problem right now.



Neubacher portrayed the Marine Mammal Commission's interest in the issue by stating, "I mean, it's that complex, because now you're talking about the Marine Mammal Commission, for example, wrote us a letter this morning. They're going to take it up on a national level."

Our investigation determined that Ragen faxed a letter to Neubacher regarding Drakes Estero the day of the hearing based on Neubacher and Allen's request. That letter states the following, in part:

It has been brought to my attention that activities associated with commercial shellfish operations (oyster farming) are leading to the disturbance of harbor seals at Drakes Estero....This is an issue that would be of interest to our Commissioners and Committee of Scientific Advisors on Marine Mammals, as protection of marine mammal habitat is one of the essential elements of marine mammal conservation.

Unfortunately, I have just learned of this issue and have not had time to bring this matter to the attention of our Commissioners so that they might give it their full consideration and consult with our Committee regarding the implications for the affected harbor seals. I understand that a meeting is to be held today to consider possible management measures pertinent to this issue. If it is possible, I would appreciate an opportunity to inform our Commissioners regarding this situation so that we might comment on those measures.

Ragen said he first became aware of the issue at Drakes Estero when he received a call from Allen and Neubacher in the spring of 2007, who informed him that they were preparing for a hearing regarding an oyster farm that was attempting to get an extension on its lease.

Ragen recalled that it took him several days to write the letter because he wanted to consult with the commissioners to get their recommendations first. He said he did not have enough information at the time he wrote the letter to take a stance on the Drakes Estero issue.

Ragen stated that Neubacher's statement about the Marine Mammal Commission planning to "take up" the issue "on a national level" was "a shade of not quite accurate" and "not the best way to state it." He disagreed with Neubacher's characterization that the Marine Mammal Commission was in NPS' corner and had already decided to take action and summarized Neubacher's assertions about the Marine Mammal Commission's level of involvement as an "overstatement."

In retrospect, Neubacher conceded that it may have been a little misleading for him to say that the Marine Mammal Commission was taking up the issue and had written NPS a letter. However, he said he had about 2 days' notice about the hearing and "...my number one job is to protect park resources, so I just did what I thought was right. I mean, there's a judgment call there that you have to make, and...maybe I'd do it different now, but at the time, it seemed that we were having dramatic change in that estuary...."

The complainants also said NPS officials made the "inflammatory, provocative claim" that the harbor seal population was down 80 percent in the estero during the MCBS hearing without specifying that the decline was "site specific." A review of an official transcript of the hearing revealed that Allen did initially specify that seals had abandoned one area of the estero but did not clarify in her next sentence that the 80 percent reduction to which she referred only applied to that particular site in that estero. She stated the following:

Over the past few weeks, we have documented oyster operations disturbing mothers with pups and oyster bags left on sandbars where seals would normally give birth and nurse

their pups. The harm is resulting in abandonment of **one area** where more than 250 seals, including 100 pups two years ago, occurred in that spot. This year, chronic disturbance and the placement of bags on the nursery areas has caused **an 80-percent reduction in the seals**, dropping to around 35 this last Saturday. [Emphasis added]

*Agent's Note: The first version of the Sheltered Wilderness report, uploaded to the PRNS Web site in February 2007, was written prior to the 2007 pupping season and reflected, "Disturbances to resting and breeding seals currently remain low because oyster activities are not occurring at existing seal haul out sites." The updated version of May 2007 stated that disturbances to the seals had "increased dramatically" in 2007 and specified that one area in the estero had experienced an 80 percent decline in seals. Allen and Neubacher explained that the situation with the seals did not become an issue until 2007, when DBOC began to expand its operation.*

#### April 26, 2007 Trip Report

Goodman and Lunny questioned the authenticity of a "trip report" Allen wrote in which she documented DBOC's oyster bags being placed on seal haul-out sites and oyster farm workers disturbing seals on April 26, 2007. Lunny stated that he was certain that DBOC did not have a boat in the estero matching the description given in the trip report on that date. In addition, Goodman pointed out that the data from that report was not initially included in PRNS' seal monitoring program's database and that on April 24, Allen had sent an e-mail message to the National Oceanic and Atmospheric Administration (NOAA) indicating that NPS had no "direct observations" of DBOC workers disturbing seals.

Allen summarized her observations in that report by writing, "A total of around 90 seals including around 50 pups were disturbed by the boat, and of these, I observed 14 seals including 7 pups directly flushed into the water...." Her trip report stated the following, in part:

At 3:50 PM I noted a **white boat** (@ 20 ft long) with outboard motor and two people aboard in the east end of the OB seal haul out site. The boat was fowled [sic] in eelgrass and the operators were poling through the eelgrass bed. Once half way along the channel going west, they used the engine again....When the boat went by the seals at 3:55 PM, all flushed into the water except for one lone seal...The boat continued west along the channel.... [Emphasis added]

The boat then landed at around 4:10 PM....Two men got off the boat, one taller in a green slicker and another in yellow slicker pants. They remained on the site until around 4:38 OM [sic]....During the interim time... seals hauled out at [the sandbar known as OB. When the boat proceeded back down the channel going east towards the seals at 4:55 PM, 5 seals flushed into the water included [sic] 2 mother-pup pairs at OB, another 3 mother pup pairs flushed at UEN sand bar, and around 75 seals alerted at UEN but did not enter the water....At 4:58 PM, the boat then proceeded up into Home Bay. I terminated the survey at 5:00 PM.

Lunny said DBOC had no boat or employees in the "UEN" or "OB" areas of the estero on April 26, 2007. According to him, of DBOC's two boats, only the "grey" one entered the estero that day but was only in the Home Bay area from 8:30 a.m. until 10 a.m. Lunny confirmed that DBOC's other boat was "white" but indicated that it was out of commission that day.

The OIG checked California Department of Motor Vehicles registration records to determine how many motorized boats are registered to DBOC. No boats were registered to the company. One boat was registered to Kevin Lunny, and one boat was registered to his father.

On October 5, 2007, Lunny sent an e-mail to the OIG indicating that he would make his two crew foremen available for interviews and that he had not told either of them “who they will be meeting...or why.” When interviewed a few days later, one of the foremen told the OIG that Lunny had explained to him that there was an investigation regarding a report that seals had been disturbed on a certain date and that someone would talk to him to ascertain whether the disturbance happened or not. He added that he had not seen Lunny in about a week and that Lunny typically spent 1 to 3 days a week at the oyster farm.

This foreman explained that he oversaw a four- or five-person “single” crew, which harvested single oysters in DBOC’s white boat. He described the boat that the remaining “cluster” crew used as “grey.” He showed investigators a copy of a “job report” dated April 26, 2007, and a document titled, “Cost Codes,” which together indicated that an employee had spent 8 hours engaged in “Facility Maintenance/Repairs” that day. He explained that since this employee spent 8 hours trying to repair the motor for the single crew’s boat that day, the white boat could not have been in the estero on April 26 (as Allen’s report indicated). He stated that there were no records that specified where a boat was at any given time on a particular day and that “ideally” each crew only used its assigned boat. On the day the OIG interviewed this foreman, the single crew was using the other crew’s boat.

The other foreman, who spoke limited English, said he supervised eight members of the “cluster” crew, which harvested clusters of oysters. In contrast to Lunny and the previous foreman’s description of the cluster crew’s boat as grey, he described his crew’s boat as “dark blue.” He explained that based on the daily report for April 26, four of the cluster crew members were in the water for 2 hours that day, including himself, from about 8 until 10 a.m. that morning. He demonstrated that the time cards for three of his crew members indicated that they had all clocked out by 4:37 p.m. on April 26, 2007, contrary to Allen’s report of workers heading for Home Bay at 4:58 p.m.

According to Lunny’s daughter, this foreman did not use time cards because he was a salaried employee; however, his son did. *Agent’s note: When interviewed, this foreman specified that a time card bearing the name “Jr.” was his, not his son’s.*

A forensic analysis by our Computer Crimes Unit concluded that the PDF file for the trip report was created on April 27, 2007. According to PRNS Chief Ranger Colin Smith, on either April 27 or the following Monday, April 30, Allen told him she had seen oyster workers disturbing seals in the estero on April 26 and asked him if she could borrow a video camera. Allen recalled that on April 27, she told Smith about her observations of the estero on April 26, but she did not remember asking him to borrow a camera. Smith also said it was not uncommon for DBOC employees to take boats out into the estero after hours to fish.

The PRNS Ecologist said he was responsible for managing harbor seal data that was collected pertaining to Drakes Estero. According to him, NPS did not initially include the information Allen obtained on April 26 in that database because her observations as a park scientist were not part of the volunteers’ monitoring program, but when the complainants questioned why that report was not part of the database, they decided to incorporate it.

We confirmed that Allen sent an e-mail message to a Wildlife Biologist with the National Marine Fisheries Service of NOAA on April 24, 2007, to which she attached a previous trip report of April 13,

2007. Neubacher was copied on the message, which informed the Wildlife Biologist that the “oyster operator” was “clearly disturbing and displacing seals” but that NPS had “no direct observations” of such activity. In the message, Allen advised the Wildlife Biologist that oyster bags were located on seal haul-out sites and asked if he would write a letter to Lunny reminding him about the Marine Mammal Protection Act since he refused to acknowledge NPS’ jurisdiction over his aquaculture lease with the California Department of Fish and Game. She also questioned whether DBOC was required to obtain an incidental harassment permit for disturbing the seals.

The Wildlife Biologist said he had known Allen as a “friend and colleague” since the 1980s. He recalled talking to Allen prior to the time he received the aforementioned e-mail, but he could not remember if he had had more than one conversation with her about the seals at Drakes Estero. He recalled sensing that Allen was frustrated with the owner of the oyster operation because he was “not listening” to NPS. He described Allen’s emotional state during their interaction as “normal” and “not frantic.” He said the National Marine Fisheries Service could not respond to every report of harassment of marine mammals, and an aquaculture operation such as DBOC did not need an incidental harassment permit for the incidental disturbance of seals.

The Wildlife Biologist said he believed that the National Marine Fisheries Service had a copy of the April 26 trip report, but he could not remember having any conversations with Allen about that report. His understanding was that his agency did not take any action relative to either NPS trip report about Drakes Estero. He said he did not know Lunny, and he did not think he had ever met Neubacher, with whom he had no conversations about this issue.

The Scientist, NPS Pacific West Region, explained that it was “absolutely pointless” for a scientist to fabricate one day’s worth of data to reach a certain conclusion because it would not be considered anything more than an “anecdote,” which “isn’t worth anything.”

Allen provided copies of handwritten notes dated April 26 to the OIG and showed investigators a bound field notebook containing those original notes. Under oath to the OIG, Allen stated that although she had brought a camera with her on April 26, she was unsuccessful taking photos through her spotting scope because the camera was not focusing properly through it. Allen subsequently provided investigators with a photo of a tripod that she had taken while viewing the estero that day. The property description file corresponding to the photo reflected the time as “14:41” on April 26, 2007. Although Allen believed that the clock on the camera was in Greenwich Mean Time, the OIG Computer Crimes Unit determined that it was not. The OIG Computer Crimes Unit determined that the camera’s 24-hour clock was behind by 1 hour and 20 minutes. Assuming that the clock was not altered at some point after April 26, 2007, the photograph was taken at 4:01 p.m., Pacific Daylight Savings time, during the time Allen’s trip report indicated she was conducting a survey at Drakes Estero.

Allen swore under oath that she did not fabricate any portion of the trip report and that it was an accurate depiction of what she had witnessed on April 26. Although Neubacher had no firsthand knowledge of whether Allen had fabricated the report, under oath, he was adamant in his belief that she had not.

#### *Differing Seal Maps*

The complainants stated that in May 2007, NPS provided the MCBS with an altered harbor seal site map that Allen gave to Lunny in 2005, which wrongfully indicated that DBOC was encroaching on

seal habitats in the estero. The OIG confirmed that NPS updated the 2005 map. The original map indicates a plot date of May 17, 2005, but the 2007 version provides no indication of its creation date.

At the OIG's request, the PRNS Cartographic Technician overlaid both versions on a single map of the estero for comparison purposes. The 2007 map defined a circular area near the center of DBOC's aquaculture lease as a seal "haulout/pupping area" that was not identified on the 2005 map as such. In addition, a pre-existing seal site from the 2005 map was extended in the 2007 map. Although the more recent version indicated a more extensive encroachment of bags on seal habitats, both versions of the map reflected oyster bags within prohibited areas.

Allen explained that the pre-existing seal site from the 2005 map that was extended on the 2007 map was a "lateral channel" that Lunny knew he was not supposed to use. She referred to a 1992 agreement between the Johnson Oyster Company and NPS that indicated as much. A review of the 1992 Record of Agreement between NPS, the National Marine Fisheries Service, the California Department of Fish and Game, and the Johnson Oyster Company reflected that the lateral channel was closed to boat traffic from March 15 through June 1 and that during the entire month of June, the channel "should be used as little as possible." Allen further explained that the new area circled on the 2007 map was not circled on the 2005 map because it was not a primary pupping area, which she was focused on showing Lunny in 2005. It illustrated a place where seals hauled out of the water.

On May 18, 2007, Allen wrote Neubacher an e-mail documenting the fact that she had met with Lunny to inform him which areas to avoid in the estero in order to prevent the disturbance of seals. In her e-mail, she wrote the following:

I want to have on record that on March 17, 2006 [sic] when we met with Mr. Kevin Lunny about Drakes Estero in the administration conference room, one of the items that we discussed was not disturbing harbor seals in Drakes Estero. I met with Kevin afterwards, and on a park brochure map, I showed him where the seals haul out and pup and explained that he should avoid those areas. I told him that I would provide a better map for his reference. I explained that the upper estero was particularly important for females with pups. Mr. Lunny was receptive to what I said and wanted more information.

That same week, I spoke with [the GIS Biologist of the park] about producing a map for Mr. Lunny so that the seal pupping and haul out areas were clearly shown. I met with [the Biologist] and he produced the map within a week. I sent the map to Mr. Lunny along with articles on harbor seals....This map was also included as Exhibit A in the draft permit to Drakes Bay Oyster Company.

Under oath, Allen clarified that the date she met with Lunny was in 2005, not 2006, as she mistakenly noted when she documented her interaction with Lunny following the MCBS hearing. Lunny confirmed that when he took over the oyster farm in 2005, he had a friendly meeting with Allen to discuss any impact the operation might have on species in the area, during which she pointed out the location of seal sites on a map.

Neubacher said he had asked Allen to document that meeting following Lunny's assertion at the MCBS hearing that NPS had not provided guidance to him about harbor seal areas that DBOC was to avoid.

At that hearing, Lunny stated the following:

...there has been a lot of concern about environmental impacts to eelgrass, to seal pups, placing bags in seal pupping areas. That's never been brought to our attention. A lot of this is the first time we've ever heard...we're doing everything in our power to do the best we can....We have hundreds of acres in our leases to put oyster bags that are near haul-out zones and not near haul-out zones, and there's nothing that says we shouldn't have bags there. A simple phone call saying 'We're worried about the bags there,' or 'We're worried about the eelgrass' – we've not been party to this. This is purely punitive. It's purely worked out behind our back, so I just want to make that clear. If we knew that these were impacts and we could do anything positively, we would have.

Allen recalled that during the MCBS hearing in May 2007, Lunny said NPS had never told him where the seal pupping areas were, but she also said that in 2005 she had shown Lunny where those areas were on a map. She said she also had the Geographic Information Systems division of PRNS make him a map of the estero with an overlay of pupping areas and that exhibit "A" of DBOC's Special Use Permit was the map Allen gave Lunny that illustrated seal pupping and haul-out areas.

The PRNS Cartographic Technician overlaid the aquaculture lease boundary, the location of oyster racks and bags, and seal haul-out areas for the 2007 version. He said Allen wanted him to update the map to include additional seal haul-out areas than were displayed on the 2005 map, so they worked together to do that in March 2007 based on her knowledge of seal habitat in his office. He said he did not recall her telling him what the map would be used for.

When asked whether NPS had given Lunny any directives restricting DBOC from certain pupping areas since 2005, Neubacher responded that during a meeting in 2006, Lunny said NPS did not have any "expertise" to be telling him where he could put oyster bags and conduct activities in the estero, a reason he gave for not signing a Special Use Permit. When asked whether NPS had informed Lunny that DBOC was harming seals in any way, Neubacher responded that NPS had not "sat down" with him to discuss the issue since 2005, but NPS had discussed it at the MCBS hearing that Lunny attended.

When asked why NPS had not sat down with Lunny to address the issue since 2005, Neubacher stated the following:

Well, we were coming out of the pupping season. We were in disagreement over the permit in general. Remember, he refused to get a permit for any operation, and he already refused to listen to any of our direction. So we were waiting for the Fish and Game letter to come, which pretty much said we had authority.

Neubacher elaborated that the letter from the California Department of Fish and Game documenting NPS' authority over the estero came on May 15, 2007, after the MCBS public hearing. Neubacher added that since Lunny had said the state had authority over the estero, he was not recognizing NPS' authority in that way.

Neubacher and Allen explained that DBOC's disturbance of the seals in 2007 caught NPS by surprise. Neubacher said volunteers who counted the seals had informed Allen that the oyster operation was placing bags in seal haul-out sites, which prompted NPS to document the location of the bags in the spring of 2007.

According to Allen, oyster bags were placed in seal haul-out areas for the first time in 2007 due to DBOC's dramatic increase in production. She said that according to the State of California, DBOC planned to increase its production of oysters from about 3 million in 2006 to about 9 million in 2007.

Allen recalled that she informed Neubacher about DBOC's oyster bags being placed in prohibited areas in mid or early April 2007. She said she did not talk to Lunny about it because her job was to guide policy, not to manage. She said she did not know if Neubacher had contacted Lunny about the issue. She described NPS as being in "a reactive mode" to DBOC's increased production.

NPS issued its Clarification Statement in response to Goodman's letters to the MCBS in May of 2007. It reflected NPS' contention that from 1997 through 2006, the oyster operation was not disturbing harbor seals during their breeding and pupping season and that the problems began in 2007. The statement reflected the following:

During the 2007 harbor seal pupping season, the NPS documented 1) oyster boats disturbing mother seals with pups, and 2) oyster bags placed on sandbars where seals would normally give birth and nurse their pups (NPS Trip reports 4/13/2007 and 4/26/2007). Two oyster bag arrays (approximately 5 acres) were within a regular harbor seal haul out site, and one other oyster bag site was within 50 meters of a regular harbor seal haul out site.

In the statement, NPS conceded, "More focused analyses are required to determine if oyster operations are affecting seal distribution and productivity within Drakes Estero." NPS also conceded, "The overall Drakes Estero and regional population declined in 2007, but not necessarily in response to the oyster farming operations." However, NPS maintained its position that DBOC "has contributed to site-specific disturbance and displacement within the estero, where historically many females with pups occur."

### ***NPS "Scientific Code of Conduct"***

On August 23, 2007, attorney Samuel Plauché, GordonDerr LLP, submitted an Information Quality complaint to DOI on behalf of DBOC, the Pacific Coast Shellgrowers Association, the Marin County Farm Bureau, Marin Organic, and the Pacific Institute pertaining to the Sheltered Wilderness report. On October 23, 2007, Pacific West Regional Director Jon Jarvis addressed the complaint by responding that NPS had removed the Sheltered Wilderness report from PRNS' Web site, had posted a correction to the report, and had initiated an "independent scientific peer review" of the body of scientific studies concerning Drakes Estero. Jarvis indicated that he expected those actions to address the complainants' "concerns regarding accuracy, objectivity, transparency, and timeliness."

The complainants alleged "scientific misconduct" against Neubacher and Allen. Based upon those allegations and other indications of improprieties regarding the accuracy of scientific information reported by PRNS, OIG investigators attempted to locate a code of conduct applicable to DOI and/or NPS employees involved in reporting the results of scientific research.

Our investigation determined that NPS did not have a "Scientific Code of Conduct" in place until a document titled, "Interim Guidance Document Governing Code of Conduct, Peer Review, and Information Quality Correction for National Park Service Cultural and Natural Resource Disciplines" (Policy Guidance Document) was issued on January 31, 2008, contemporaneous to this investigation.

Although the guidance document was labeled “interim” and was in draft form, it was to remain in effect “until amended or superseded.” An NPS Scientist confirmed that NPS did not have its own Scientific Code of Conduct until the Policy Guidance Document was issued.

*Agent’s Note: In a memorandum to the Secretary titled, “Allegations of Misbehavior on the part of FWS Employees Involved with the National Interagency Canadian Lynx Survey,” dated March 1, 2002, the OIG recommended that the Department “...design and implement a DOI Scientific Code of Ethics.”*

A review of the Departmental Manual (370 DM 752), under Appendix B, “Table of Offenses and Penalties” [Nature of Offense (General Misconduct) – Offense #30], reveals a chargeable offense described as “Violating the Department’s Code of Scientific Conduct (or other professional code of conduct that applies to employees required to maintain professional license or membership).” The table refers the reader to 305 DM 3; however, attempts to retrieve this section via the Electronic Library of Interior Policies or “ELIPS” resulted in a determination that this manual section was under revision.

A departmental letterhead “draft” document titled, “The Code of Scientific Conduct,” dated March 16, 2004, was located. Further inquiry determined that this document had never been enacted, even though the information had been released to the public indicating that it was pending.

Inquiries with the Office of the Secretary as to a signed/approved Scientific Code of Conduct determined that there was no such record. Further, contact with the Departmental Manual Office regarding the status of the Scientific Code of Conduct (305 DM 3) determined that a completed Code had been routed through the approval process in April and May 2006, and then sent to the Office of the Secretary for signature. However, the document had not been approved or returned to the Departmental Manual Office.

The Scientist also made reference to NPS Director’s Order 11B: “Ensuring Quality of Information Disseminated by the National Park Service.”

*Agent’s Note: While this order provides guidance to NPS employees in an effort to ensure the quality and accuracy of information collected and disseminated by NPS, this order does not serve in place of a “Scientific Code of Conduct,” nor does it remedy NPS’ obligation to implement such a policy.*

When investigators were unable to locate either a Departmental or NPS Scientific Code of Conduct, the search was broadened to determine if there was an applicable code for the federal government as a whole. It was determined that the White House Office of Science and Technology Policy announced on December 6, 2000, the establishment of the “Federal Policy on Research Misconduct.” According to the announcement, “The policy will apply to Federally-funded research regardless of where the research is conducted or by whom.” The announcement also reported that federal agencies would have 1 year to implement the policy, which was published in the December 6, 2000 edition of the Federal Register. Included in the Office of Science and Technology Policy were definitions of research misconduct, a statement of the responsibilities of federal agencies, and very general guidelines for dealing with federal employees who violated said policy.

## Part II: DISPARATE TREATMENT

In support of their allegations of Neubacher’s pattern of mistreatment of them, the Lunny family offered several examples of what they felt constituted disparate treatment by the superintendent. They



stated that Neubacher had (1) prevented Kevin from displaying certain signs for DBOC, (2) disallowed him from maintaining a road leading to DBOC, and (3) intended to try to shut down DBOC prior to 2012. Further, they alleged Neubacher had (4) prevented DBOC from participating in a proposal to study the reintroduction of native oysters to Drakes Estero and (5) prevented DBOC from clearing a Cease and Desist Order that had been issued to the previous owners of the oyster farm. In addition, they claimed Neubacher was (6) misinterpreting the Wilderness Act to mean that DBOC could not operate past 2012 and (7) imposing unnecessary restrictions on the G Ranch, which Kevin Lunny's parents operated. Finally, they alleged that NPS had (8) not sufficiently responded to Freedom of Information Act (FOIA) requests that Goodman had filed. The OIG examined all of these allegations of disparate treatment, which are addressed below.

### ***DBOC Signage***

Lunny complained that he was not afforded the same opportunity as the previous operator to display signs for DBOC within the PRNS boundary. He claimed that in the early part of 2006, NPS made and installed two new DBOC signs. According to Lunny, the second sign displaying DBOC's operating hours was removed within a few weeks of its installment with no explanation from NPS.

Our investigation determined that due to a miscommunication between a PRNS sign maker and Neubacher, a DBOC sign bearing a commercial message was erected on NPS property, in violation of NPS' sign policy. That policy was implemented in 1988 and was regulated by the Department of Transportation's "Manual on Uniform Traffic Control Devices," which states, in part, "No traffic control device or its support shall bear any advertising or commercial message, or any other message that is not essential to traffic control."

We determined that within a few days of erecting the signs, the PRNS Buildings and Utilities Supervisor and the sign maker's boss, the Chief of Facility Management, had informed the sign maker that the sign advertising DBOC's hours of operation needed to come down immediately because PRNS could not advertise commercial messages for its concessionaires. The PRNS sign maker said that when he discussed the issue with Neubacher, he (Neubacher) admitted that he had not noticed some verbiage on the sign designs that the sign maker had sent him.

Neubacher confirmed that prior to his term as the PRNS superintendent, there was one sign on the main road leading to the Johnson Oyster Company that was out of compliance with NPS' current policy, and with the change in ownership of the oyster operation, he wanted to bring the signs into compliance with policy. As of mid 2007, Lunny had not complained to the sign maker or Neubacher about the state of DBOC's new signage.

### ***Road Maintenance***

Lunny said he assumed that he would maintain the road leading to DBOC himself; however, he said Neubacher told him that NPS would be taking over the maintenance of the road despite the fact that the Lunnys owned a paving business. Lunny said Neubacher followed up his decision with a letter stating that NPS would conduct all road maintenance.

While Lunny claimed that in a conversation with the PRNS Building and Utilities Supervisor and the PRNS Chief of Facility Management that he offered to maintain the road for NPS at a cost of one dollar, we could not substantiate this claim. The Building and Utilities Supervisor did not recall Lunny offering to maintain the road for a dollar and added that he had never discussed this issue with Neubacher.

The Chief of Facility Management said he and Neubacher felt that with the Lunnys taking over the oyster farm from the Johnsons, it was a good opportunity for PRNS to assume the responsibility of maintaining the road, as this would reduce potential liability issues of a private entity providing maintenance on a government road. According to the Chief, Lunny agreed and had never complained to him about PRNS taking over the responsibility of maintaining the road. He also did not remember Lunny offering to maintain the road himself for a dollar. According to the Chief, in addition to the road leading to DBOC, NPS maintained all other government-owned roads in PRNS.

Neubacher stated that there was an arrangement established by the previous superintendent that allowed the Johnsons to maintain the road before Lunny took over DBOC. He said an environmental group had complained about Lunny pushing dirt into the estuary, and when he (Neubacher) did research to determine who should maintain the road, he found no easement that would allow Lunny to maintain the government road himself. Neubacher expressed concern about the possibility of NPS getting sued if a private citizen got hurt while working on a public road.

A review of PRNS' files revealed a letter from Lunny to Neubacher, dated June 7, 2005, in which Lunny wrote, "DBOC has no problem with NPS providing road maintenance." On January 3, 2006, DBOC sent another letter to Neubacher in which Lunny wrote that a recent "reprimand" from Neubacher about DBOC not having authorization to maintain the road had come "as a complete surprise."

On January 12, 2006, Neubacher responded to Lunny by confirming that NPS had discussed the road maintenance issue with Lunny over the phone. A subsequent letter from Neubacher to Lunny, dated February 23, 2006, documented that NPS had noted during a visit to DBOC on February 17, 2006, that the Lunny family had repaired the road with asphalt. In that letter, Neubacher wrote that he thought that the issue of who was to maintain the entrance road "had been resolved."

### ***Intention to Oust DBOC Prior to 2012***

The Lunny family claimed that Neubacher and NPS had conversations and had taken actions to actively try to shut down DBOC prior to the expiration of its lease in 2012. These allegations stemmed from discussions at two meetings – one in January 2005 between Neubacher and local environmentalists Ken Fox, President of the Tomales Bay Association; Jerry Meral, member of the Environmental Action Committee of West Marin; and Gordon Bennett, Vice Chair of the Sierra Club's Marin Group, and one in April 2007 between Marin County Supervisor Steve Kinsey and Neubacher. Regarding the January 2005 meeting, Lunny stated that Ken Fox told him that during a meeting Fox attended with Bennett, Neubacher, and Meral, Neubacher had an "affirmative reaction" to their suggestion of financially harming DBOC.

Fox recalled attending a meeting on January 23, 2005, with several people, including Bennett and Meral, at what was commonly known as the "red barn" in PRNS soon after Lunny took over the oyster operation. Fox stated that no one spoke of trying to shut DBOC down prior to 2012 and denied that there was any discussion about financially ruining the Lunnys or about putting DBOC out of business. Additionally, Fox said he was not certain that Neubacher had attended the meeting in question.

Bennett recalled attending at least one meeting at PRNS with Neubacher, Fox, and Meral but denied that they ever discussed a plan to oust DBOC from the park prior to 2012 or to financially ruin DBOC. He provided a copy of minutes from the meeting of January 23, 2005, which reflect that NPS staff was in attendance but do not specify which NPS officials were present. Bennett added that no one from NPS had ever told him that they would like to see DBOC "gone" before 2012.

Meral stated that he had never participated in a discussion with Neubacher or any other PRNS employee about the possibility of financially undermining DBOC to hasten the farm's exit from the park. He added that he had never heard any NPS employee say that they would like to see DBOC gone from the park before 2012. Similarly, Neubacher denied that anyone had ever made suggestions to him about ways to remove DBOC's operation from the park prior to 2012.

Another example that Lunny gave to illustrate his contention that Neubacher wanted to shut down DBOC was a conversation he had with Marin County Supervisor Steve Kinsey, who met with Neubacher in April 2007. According to Lunny, Kinsey told him that Neubacher was going to shut down the farm before 2012 because the Lunnys were doing so much environmental damage. Lunny said Kinsey warned him that Neubacher was "crazed" and that he was "going to war" against the oyster farm. Lunny said that Kinsey's aide corroborated Kinsey's account of the meeting.

Kinsey told OIG investigators he had met with members of the Lunny family at various times since approximately the end of 2005 to discuss their concerns about the future of DBOC. In Kinsey's opinion, Neubacher was "holding [the Lunnys] hostage" until they agreed to sign a document agreeing to leave by 2012. He opined that Neubacher was "throwing down a gauntlet of obstacles" for the Lunnys by refusing to sign off on some building permits that the county was ready to issue to DBOC, thereby making it impossible for Lunny to clear a longstanding Cease and Desist Order that the California Coastal Commission had issued to the Johnson Oyster Company.

Kinsey confirmed that he and his aide met with Neubacher at PRNS in April 2007 to discuss several issues, including DBOC. When Kinsey suggested that they convene a scientific panel to evaluate DBOC's impact on the estuary, Neubacher said that would not be necessary and then showed Kinsey and his aide documents and aerial photographs or "photomaps" demonstrating cuts that DBOC's boats had made through the eelgrass. Kinsey said the atmosphere was like that of a "war room." Kinsey could not recall whether he told Lunny that Neubacher was "crazed," but he felt it was accurate to say that Neubacher was "very upset" and "seemed obsessed" with proving that DBOC was harming seals and eelgrass in the estuary.

Kinsey confirmed that he told Lunny that Neubacher intended to shut DBOC down. Kinsey stated that although he did not specifically remember Neubacher saying this, the tenor of the meeting left no doubt in Kinsey's mind that Neubacher intended to shut DBOC down prior to 2012.

According to Kinsey, Neubacher made "strong environmental accusations" against DBOC during their April 2007 meeting and made reference to DBOC committing environmental felonies. Kinsey summed up Neubacher's portrayal of Lunny as a "character assassination." Kinsey recalled that during the April 2007 meeting, Neubacher said he had been trying to find a way to keep Lunny operating in the park through the end of his lease with NPS but that a recent "pro oyster" editorial titled, "Fergie the Oyster versus Smokey the Bear," in the *Coastal Post* had changed his mind. Kinsey recalled that Neubacher said something along the lines of, "I tried to work with [Lunny], but I'm done." **Agent's Note:** *An editorial titled, "Ollie 'Erster versus Smokey the Bear," was published in the April 2007 edition of the Coastal Post.*

Following their meeting, Kinsey said he invited Neubacher to attend a hearing before the MCBS on May 8, 2007, to consider the "adoption of a draft letter to our federally elected representatives" supporting the continued operation of DBOC.

Kinsey's aide recalled that Neubacher was "entirely courteous" during the April 2007 meeting, but he was surprised by his "vehemence" about Lunny's supposed disregard for the environment. During the meeting, he said Neubacher explained that he had to comply with a potential wilderness mandate that will be enacted in 2012. Kinsey's aide speculated that Neubacher was "putting the brakes on" DBOC's permitting process so that he would have a better argument for converting the site to wilderness in 2012, but he said he never heard Neubacher say that he planned to shut DBOC down before then.

Neubacher recalled telling Kinsey that he had some concerns about the operation's impact on the estero and explained that Lunny would have to go through the National Environmental Policy Act process. He stated that he had always said DBOC had the right to operate in the park until 2012.

Neubacher clarified that the comment attributed to him about "going to war" pertained to his comment to Kinsey that environmental groups might "go to war" to ensure that Drakes Estero becomes wilderness in 2012. When asked if he said something about being willing to work with Lunny until the *Coastal Post* article came out, Neubacher responded the following under oath:

I don't know if I said that....I did say that I was very frustrated that we were trying to work really closely with Kevin, and we were getting this kind of information through the press. But there's no way. I mean, I don't have the authority to even not work with him 'til 2012. The reservation of use is a legal right.

Neubacher conceded that he told Kinsey about some criminal violations he believed had occurred related to the G Ranch, not DBOC. **Agent's Note:** *Issues regarding the G Ranch are addressed later in this report.*

With the exception of Kinsey, no other individuals interviewed during this investigation said Neubacher or any NPS official had ever indicated that they wanted to shut DBOC down prior to 2012, including the following California Coastal Commission officials: Deputy Director Alison Dettmer; Chief Enforcement Officer Lisa Haage; Deputy Director Alfred Wanger, Jr.; and District Enforcement Officer Joanne Ginsburg, as well as an Attorney-Advisor of the Solicitor's Office; a Field Solicitor; Elliott-Fisk; Harbin-Ireland; a PRNS Cartographic Technician; the PRNS Marine Ecologist; a retired NOAA employee who had been detailed to NPS; an Ecologist with NOAA; and Phyllis Faber, the co-founder of the Marin Agricultural Land Trust and an advocate for DBOC.

The Attorney-Advisor and a DOI Field Solicitor opined that NPS had the legal authority to shut DBOC down prior to the expiration of its Reservation of Use and Occupancy in 2012, but they were not aware of NPS terminating any other Reservation of Use and Occupancies in the past. They felt that NPS and Neubacher had been trying to work things out with Lunny. The Field Solicitor opined that NPS had been "bending over backwards to try and accommodate [Lunny]" with his permitting process.

There was no indication that any NPS employees planned to oust DBOC from PRNS prior to the expiration of the Reservation of Use and Occupancy in 2012 in any of the documentation that was reviewed for this investigation, including internal PRNS e-mails and other correspondence. Two e-mails obtained during the investigation specified that NPS intended for DBOC to operate until 2012. One e-mail from the Solicitor's Office to Neubacher in June 2006 indicated that NPS planned for DBOC to operate in PRNS until 2012.

Another e-mail that Neubacher received on July 17, 2007, from Assistant Regional Director Holly Bundock of the Pacific West Region of NPS reflected, "We do not want to put Mr. Lunny out of

business but he must comply with our stipulations, including that the operations must cease when the reservation expires in 2012 date.”

### ***Proposal to Introduce Native Oysters to Drakes Estero***

In another example that Lunny claimed illustrated his mistreatment by Neubacher, Lunny wanted to determine the feasibility of introducing native oysters to Drakes Estero but was told that Neubacher would not allow the project because the Lunny family was financially irresponsible. Lunny said a company called “MACTEC” was studying native oyster populations in the San Francisco Bay and wanted to use DBOC’s spare oyster shells for a San Francisco Bay project. In return, MACTEC planned to conduct research in PRNS to see whether introducing native oysters to the estero would be possible. Lunny said NPS issued a Special Use Permit to MACTEC for the removal of the shells, but since NPS would not let MACTEC conduct its study of the estero, he paid \$20,000 toward the project without the benefit of MACTEC’s research.

According to Lunny, when a Biologist of MACTEC approached Neubacher about the possibility of doing the study, Neubacher told the Biologist that DBOC was going to close in 2012 and that NPS would not allow the project because the Lunnys were financially irresponsible. Lunny described the Biologist as “livid” about Neubacher’s characterization of the Lunny family.

The Senior Biologist for MACTEC Engineering and Consulting said he wrote a proposal for the project, which was submitted to the Ocean Trust for funding and was reviewed by the U.S. Fish and Wildlife Service and NOAA. He recalled that at some point in March or April 2006, Allen called and told him that MACTEC could not use DBOC’s shells because the company did not have a permit from NPS. Although NPS required MACTEC to obtain a Special use Permit in order to take the oyster shells from DBOC, the Biologist said he subsequently obtained one from PRNS with “no difficulty.”

The Biologist for MACTEC recalled that about 2 weeks after Allen’s call, Neubacher and Allen participated in a teleconference with the Ecologist of NOAA. He said Neubacher and Allen were opposed to MACTEC conducting research in the estero because NPS felt there were not enough native oysters living there to justify MACTEC’s study. He recalled that Neubacher also explained that since the Wilderness Act required the estero to revert to wilderness at some point, he did not want to do anything to encourage Lunny to continue his oyster operation past that time. He added that Neubacher implied that Lunny was unreliable because he did not pay his bills on time.

The NOAA Ecologist said that prior to speaking with Neubacher and Allen, he thought that either the Biologist for MACTEC or Lunny had already obtained any necessary authorization or permits for the project from NPS. He said Neubacher and Allen were caught off guard by the project because they had not been informed of it sooner, something for which the NOAA Ecologist apologized to them. At the time the proposal was discussed with NPS, he said he did not know the history of PRNS’ ongoing dispute with Lunny. The NOAA Ecologist described all participants in the teleconference as professional and said he would not have described the Biologist for MACTEC as “livid” about anything that was discussed. He also recalled Neubacher mentioning something about Lunny not being very responsible with money, but he characterized it as a “heads up” comment in the event that Lunny was to handle money for the project and did not consider it malicious.

Neubacher explained that because Lunny submitted a grant to NOAA without notifying NPS about the proposal, the first time PRNS became aware of the project was when someone from NOAA called Allen to ask what NPS thought of it. Neubacher denied the research portion of the proposal because it was “research with implementation,” meaning that MACTEC planned to put unnatural structures in the

estero to create substrate where native oysters could grow, thereby potentially altering natural ecological processes. Neubacher conceded that when he spoke to someone from MACTEC about the proposal, he commented that MACTEC “ought to double check” a donation that the Lunnys were supposed to make toward the project because the Lunnys had been in default on payments to NPS for 10 years.

### ***Clearing the Cease and Desist Order***

In their April 18, 2007 letter to NPS requesting an investigation of Neubacher, the Lunnys complained that DBOC was unable to complete all the requirements of the Cease and Desist Order from the California Coastal Commission because Neubacher had impeded their ability to obtain a building permit from Marin County “without reason or explanation” for “more than a year.” The Lunnys characterized NPS’ delay as “inexplicable” and “punitive.” During a subsequent interview of Lunny to seek clarification of this and other issues, Lunny stated that the reason he was unable to comply with all the provisions of the Cease and Desist Order was because he did not have a Special Use Permit from NPS.

DOI regulations require anyone operating a business within a national park to have a “permit, contract, or other written agreement with the United States.” NPS issues permits to “impose conditions to manage the activity and prevent impairment or derogation of resources, values, and purposes for which the park was established” and “to obtain the signature of the permittee agreeing to the conditions” of the permit. Special uses within national parks are to be “consistent with applicable legislation, federal regulations and administrative policies” and “not create unacceptable impacts to park resources.”

At the MCBS hearing on May 8, 2007, Lunny claimed that DBOC had been working with NPS to obtain a Special Use Permit but that DBOC was out of compliance with the Cease and Desist Order because NPS had not renewed the Special Use Permit. He told MCBS, “We’ve been hoping for that permit to be renewed.”

Our investigation determined that until April 22, 2008, Lunny had refused to sign a Special Use Permit from the time he bought the mariculture business in 2005 despite ongoing efforts by NPS to negotiate with him. Lunny offered the OIG two reasons why he had not signed a Special Use Permit. One reason he gave was a dispute he had with NPS over the boundaries of land that were subject to the Reservation of Use and Occupancy and therefore did not require him to obtain a Special Use Permit for its use. The second reason he gave was that he questioned why NPS wanted him to sign a Special Use Permit that was over 20 pages long when the Special Use Permit for the previous operator, Johnson Oyster Company, was much shorter. In addition, Lunny initially complained that Neubacher wanted him to sign an unspecified document agreeing that DBOC would leave the park in 2012 when the Reservation of Use and Occupancy expired; he later conceded to the OIG that the document in question was actually the Special Use Permit.

In reference to the dispute Lunny had with NPS regarding the boundaries of land subject to a Special Use Permit, Lunny told the OIG that he hired a surveyor to clear up a property dispute regarding a survey that Johnson Oyster Company had commissioned that indicated that DBOC’s shucking building, hatchery building, and retail building were at least partially located off DBOC’s reserved area. Lunny complained that Neubacher would not recognize his new survey and was therefore complicating and slowing down the Special Use Permit process.

Our investigation determined that Lunny sought a new survey in 2005 in an attempt to avoid having to sign a Special Use Permit for the use of those buildings. The process of waiting for the surveyor

whom Lunny hired to complete his work and the subsequent disagreement between NPS and Lunny about which survey was more accurate significantly delayed the process of Lunny obtaining a Special Use Permit.

When Neubacher realized that the original survey placed DBOC's buildings off the reserved area while Lunny's survey placed them on the reserved area, he sent both surveys to the Chief, Pacific Land Resources Program Center, Gregory Gress.

Gress said he subsequently sent both surveys to Lance Bishop, the Chief of Geographic Services for Cadastral Survey of the Bureau of Land Management, who opined that the original survey by Johnson Oyster Company was the more reliable of the two. Both Gress and Bishop denied that Neubacher or anyone had tried to influence their opinion about the surveys.

After Gress notified Lunny that he had directed Neubacher to go by the original survey in June 2006, Lunny subsequently produced a letter from the surveyor who had worked for Johnson that stated that *his* survey was not intended for the purpose for which it was being considered. At that point, PRNS sent both surveys to a private title company, which recommended that Lunny's survey be used. Neubacher ultimately agreed to allow Lunny to use the three buildings in question without them being subject to the Special Use Permit since they would still be held to the conditions of the Reservation of Use and Occupancy agreement.

PRNS files indicate that Neubacher wrote to Lunny on January 25, 2007, to document that on January 12, 2007, Lunny and PRNS staff had "agreed to work around" the survey dispute and move forward with finalizing the Special Use Permit. Lunny responded to Neubacher with a letter stating, "We believe that the survey issue has been resolved, and that there is no need to 'work around it.'"

When interviewed in June 2007, Neubacher said he did not understand why Lunny still considered the surveys an issue since he had told Lunny that NPS was only going to hold DBOC to the terms of the Reservation of Use and Occupancy Agreement for those buildings, not the Special Use Permit. He subsequently stated that he had never told Lunny that he would not be able to use the buildings in question unless they were on the reserved land. He stated, "Personally, I don't care where [the boundary] is...I can't give up...United States government land to anybody....I just wanted it to be accurate..." Neubacher added that no matter what, Lunny was still required to get a Special Use Permit for part of the shoreline that was not affected by either survey.

In order to determine why the Special Use Permit for DBOC was lengthier than the previous one for the Johnson Oyster Company from 1972, we spoke to the PRNS Special Use Coordinator. The Coordinator recalled that Neubacher asked him to write a draft Special Use Permit for the Lunnys to get DBOC's permitting process started in 2005. He described the Special Use Permit he wrote as "pretty standard" and said he had used Johnson Oyster Company's pre-existing Special Use Permit as a starting point and referred to other Special Use Permits in PRNS as a guideline. According to the Coordinator, when the Solicitor's Office incorporated "universal stock language" into the permit, Lunny felt the permit was too restrictive.

Neubacher explained that in 1972, Special Use Permits were "very simplistic" because NPS had not "come of age in terms of authority." He said that current Special Use Permits were a lot more sophisticated and included standard clauses that were not included in historic permits. He added that all Special Use Permits were now "20 to 30 pages."

An additional issue Lunny initially cited as evidence of disparate treatment by Neubacher was the fact that Neubacher had asked him to sign “a document” acknowledging that DBOC would “be gone” when the Reservation of Use and Occupancy expired in 2012, which Lunny said he would not sign because his attorney advised against it. Lunny told the OIG that although he did not believe he had an absolute right to keep DBOC operational in the park past 2012, he wanted the opportunity to do so. Lunny later confirmed Neubacher’s contention that the only document Neubacher had asked him to sign acknowledging that DBOC had to leave PRNS in 2012 was the Special Use Permit.

In June 2005, Lunny sent Neubacher an e-mail requesting that the following language be incorporated into the Special Use Permit:

Permittee and Permitter acknowledge and recognize that...the Reservation of Use and Occupancy...does allow for issuance of a special use permit for the continued occupancy of the property...beyond the 2012 term, at the discretion of the Permitter.

Neubacher had informed Lunny that his suggested text would not be a part of the permit “because the wilderness designation came after the signing of the [Reservation of Use and Occupancy].” *Agent’s Note: The relationship between the Reservation of Use and Occupancy and the Wilderness Act is addressed in the next section of this report.*

A second draft of the Special Use Permit, dated June 7, 2005, from NPS contained the following similar clause, which was added by the Solicitor’s Office:

The Permittee acknowledges that they have been informed about the Congressional designation of the adjacent Drakes Estero area as potential wilderness. The Permittee also acknowledges that they have been provided the National Park Service legal opinion dated February 26, 2004 regarding the future of the potential wilderness area and legal options after the expiration of the 1.43 acres of land under the 2012 Use and Occupancy Permit.

DBOC subsequently faxed the June 7, 2005 version back to NPS a few days later with the language added by the Solicitor’s Office deleted.

A subsequent undated draft of DBOC’s Special Use Permit sent to Lunny on December 20, 2005, contained a space for the “Permittee’s Initials” next to the following text:

The permittee and permitter acknowledge and recognize that extension of this permit is not currently authorized beyond the expiration of the reservation of use and occupancy referenced in the deed from Johnson Oyster Company to the United States of America....This Reservation of Use and Occupancy expires on November 9, 2012. The permittee acknowledges that they have been informed about the Congressional designation of Drakes Estero as potential wilderness. The permittee also acknowledges that they have been provided the Office of the Solicitor legal opinion...regarding the future of the potential wilderness area. [Emphasis included]

The Attorney-Advisor, DOI Solicitor’s Office, said he drafted the above section of the draft Special Use Permit because “we wanted to be very clear with Mr. Lunny that it was the position of the Solicitor’s Office and the Park Service that it [RUO] wasn’t going to be extended beyond 2012, so that he was fully aware of that going into it.” The Field Solicitor said he wanted such language in the permit because he had learned from past experience that as the “sunset” dates approached, some



permittees tried to extend that date by claiming that there was some “ambiguity as to whether or not whatever the operation was could be continued.”

When we first interviewed Lunny to follow up on his request for an investigation, he stated that the California Department of Fish and Game owned and managed the submerged lands of Drakes Estero. Neubacher explained that one of the reasons Lunny had not signed a Special Use Permit for the use of the estero was due to “jurisdictional issues over the waters” between the California Department of Fish and Game and NPS.

PRNS documented its understanding that, during a meeting with PRNS and California Coastal Commission staff members in January of 2007, Lunny had agreed that the use of the submerged lands of the estero would be subject to a Special Use Permit. NPS wrote a letter to Lunny, dated January 25, 2007, outlining this understanding, but Lunny disputed that he had agreed to obtain a Special Use Permit for the submerged lands of the estero in a letter he wrote to NPS dated January 29, 2007.

We determined that although the State of California granted the tidelands and submerged lands, including “leased state water bottoms” within the boundaries of PRNS, to the United States in 1965, the California Department of Fish and Game did not officially acknowledge NPS’ authority over the estero until 2 weeks after the MCBS hearing in May 2007. At that time, California Department of Fish and Game Director L. Ryan Broddrick memorialized CDFG’s position that DBOC’s mariculture operation “is properly within the primary management authority of the PRNS....”

As previously mentioned, Lunny alleged that Neubacher was preventing him from complying with the Cease and Desist Order that DBOC assumed from the Johnson Oyster Company – by not allowing him (Lunny) to obtain a building permit from Marin County. Our investigation determined that even if Lunny had obtained a building permit from the county, that still would not have put him in good standing with the California Coastal Commission because he had committed violations of the Coastal Act due to unauthorized development he had undertaken on the DBOC site. The California Coastal Commission had been awaiting a complete application for a coastal development permit from Lunny so that he could obtain such a permit. However, DBOC’s lack of an effective Special Use Permit with NPS was preventing Lunny from completing that application. No California Coastal Commission officials who were interviewed during this investigation were aware of Neubacher or any NPS official doing anything improper to stall the process of DBOC obtaining permits from either the California Coastal Commission or NPS.

On September 11, 2007, John Dixon, an Ecologist with the California Coastal Commission, issued a memorandum documenting impacts that DBOC’s operation was likely having on Drakes Estero, including the disturbance of harbor seals. Dixon told the OIG that the California Coastal Commission had directed him to “independently assess what sort of issues were involved with aquaculture” in Drakes Estero due to the ongoing controversy regarding permits. One of the 43 references he cited was Allen’s trip report of April 26, 2007. Dixon vehemently denied that anyone from NPS had tried to influence his findings.

Lunny responded to the California Coastal Commission about Dixon’s memorandum on September 27, 2007, by stating that the allegations made by NPS of disruption to the seals were false and solely based on the April 26 trip report he questioned. Lunny offered Dixon’s memorandum and the trip report as reasons for further delaying the Special Use Permit process. He wrote the following:

The Commission Report arrived at the very time DBOC is in the middle of Permit discussions with the NPS. However, the NPS Trip Report is so disturbing and inaccurate

that we are compelled to halt our internal evaluation of our pending NPS permit. This is delaying our scheduled meetings with NPS while we address their allegations of harm and disruption to harbor seals.

On October 3, 2007, the California Coastal Commission issued a Notice of Intent to Commence Cease and Desist Order Proceedings against DBOC. On November 29, Lunny signed a Cease and Desist Consent Order, which the California Coastal Commission adopted on December 12, 2007, regarding DBOC's "unpermitted development of offshore aquaculture operations, onshore processing and retail facilities, and related residential use." The Consent Order required Lunny to "fully participate and cooperate in good faith in the National Park Service permitting process, provide timely responses, and work to advance the process as efficiently as possible...." The Consent Order further indicated that DBOC would obtain its coastal development application after NPS had taken action on the Special Use Permit.

A few weeks after the California Coastal Commission hearing, Lunny and his wife sent a 12-page letter to NPS Pacific West Region Director Jon Jarvis primarily addressing their dispute with scientific data previously addressed in this report, including the April 26 trip report. Their letter concluded with the following statement:

Something is terribly wrong. Instead of resolving our differences, you are working overtime to make them worse. For that, our hearts are heavy. We are being treated unjustly. Our family is intimidated and fearful for our future and our financial survival.

In response, Jarvis sent Lunny another copy of the Special Use Permit on January 14, 2008, and wrote the following: "I think it is in all of our interests that we try to bring [this issue] to a mutually agreeable solution as soon as possible." Jarvis further wrote:

DBOC is currently operating a commercial business within a unit of the National Park System without any permit. Our regulations require that any special use permit to carry out any activity in a unit of the National Park System...You are not being singled out in any way. You need the [Special Use Permit] to be in compliance with [the California Coastal Commission]...we have structured the permit to be nearly identical to the dairy permits in the insurance and other 'boiler plate' provisions....We have offered the permit until 2012, when the [Reservation of Use and Occupancy] expires....As for the environmental provisions, they are nearly identical to those required by the...Consent...Order....

Jarvis further wrote:

Kevin, you have stated many times that you would like to go back to a former time, when the relations with the NPS were cordial. I agree. Unfortunately, this issue now involves attorneys, reporters, DC lobbyists, environmental and agricultural constituency groups, elected officials, scientists, investigators, state regulators and now the highest scientific body in the United States....The best way we can bring back that relationship back is for you to negotiate in good faith. We have attached a permit that meets all the points we discussed with the Senator and it is my hope you will sign it. With your signature, we can move this back to an on-going operation and collaborative relationship.

On February 17, 2008, lobbyist David Weiman of Agricultural Resources, in Washington, D.C., informed the OIG that he had recently met with NPS Deputy Director Daniel Wenk regarding DBOC,

whom he had asked to proceed with DBOC's Special Use Permit only "AFTER the IG has acted."

*Agent's Note:* No one from the OIG has ever requested that Weiman, the NPS, or anyone else wait for the completion of this investigation or report before proceeding with enactment of the Special Use Permit or any matter. On April 24, 2008, Kevin Lunny informed the OIG that he had signed a Special Use Permit for DBOC on April 22, 2008.

### ***Interpretation of Wilderness Act***

The Lunny family alleged that Neubacher was misinterpreting the Wilderness Act as a means to force DBOC's departure from the park when the Reservation of Use and Occupancy expires in 2012. In their letter to the OIG, the Lunny family wrote, "It's not clear that 'Wilderness' excludes the operation of the shellfish farm. And, it's not clear that Congress intended, in making [Drake's Estero] potential wilderness, to exclude shellfish production in Drakes Bay." They also wrote, "It makes no sense to insist that the estero is 'Wilderness' while surrounded by cattle and beef operations down to within a few feet of the shoreline."

Neubacher explained to the OIG that he had no authority to renew DBOC's Reservation of Use and Occupancy because the Wilderness Act required Drakes Estero to revert to wilderness when the Reservation of Use and Occupancy expires in 2012. He provided a legal opinion from the Solicitor's Office indicating as much to the OIG.

A retired Field Solicitor recalled that he issued that legal opinion to Neubacher in February of 2004 based on a request from Jarvis and Neubacher. His opinion concluded that "...the Park Service is mandated by the Wilderness Act, the Point Reyes Wilderness Act and its Management Policies to convert potential wilderness, i.e., the Johnson Oyster Company tract and the adjoining Estero, to wilderness status as soon as the non-conforming use can be eliminated."

According to the retired Field Solicitor, "potential" wilderness areas such as the DBOC site required NPS to manage them as wilderness once any "non conforming use," such as the mariculture operation, expired. In his opinion, no one had the authority to circumvent the Wilderness Act by allowing Lunny to operate DBOC in the estero past the expiration date of the Reservation of Use and Occupancy, and the only way Lunny could prolong DBOC's departure from PRNS would be through the passage of new legislation by Congress. In his opinion, if Congress were to pass legislation authorizing Lunny to operate past 2012, they would be establishing a "dangerous precedent" with nationwide ramifications.

During a July 2006 radio broadcast, Neubacher agreed that removing Drakes Estero from wilderness status would set a "dangerous precedent."

### ***Restrictions on G Ranch***

In addition to expressing concerns regarding what they considered disparate treatment pertaining to DBOC, the Lunnys' letter requesting an investigation explained that they had not signed a "lease" with NPS for the G Ranch since 2004 because the latest "lease" was "arbitrary" and "punitive." *Agent's Note:* What the Lunnys referred to as a lease is actually a Special Use Permit. The Lunnys complained that NPS inappropriately claimed that they had violated the terms of the Special Use Permit and ordered all of the cattle off the ranch. The Lunnys disagreed with NPS that they had exceeded their allotment of cattle as delineated in the Special Use Permit based on their contention that they rotate their herd between several pastures, some of which were not PRNS land.

The Lunny family also complained in their letter to the OIG that in the latest version of the Special Use Permit, NPS had “either deliberately or accidentally” failed to include “Field # 11” as a field from which the Lunny family could cut hay or silage (animal feed). According to the Lunnys, the family had cut silage from that field since the 1960s and was entitled to continue doing so.

To illustrate their point that the Special Use Permit was arbitrary, the Lunnys pointed out that while the first version of the 2004 Special Use Permit for the G Ranch allowed for an annual, *average* stocking level of 90 Animal Units per year, the more recent draft only allowed a *maximum* stocking level of 90 Animal Units *at any one time*, with both versions limiting the total number of Animal Unit Months (a measurement of forage/food consumed per month) to 1,080 annually. They also complained that the Special Use Permit did not allow them to cut silage from Field #11, which they claimed to have used in “rotational silage production since the 1960s.”

Joseph Lunny, Sr., and his wife, Joan Lunny, operate the G Ranch. When interviewed, Joseph Lunny, Sr., (hereafter referred to as “Lunny Sr.”) made several conflicting statements and admitted that he had a hard time remembering events. He said that from the time NPS bought the G Ranch in 1974, he had signed Special Use Permits with NPS every 5 years when they came up for renewal until 2004. Lunny Sr. said that, unlike the previous PRNS Superintendent John Sansing, Neubacher would not compromise on the terms of the ranch’s Special Use Permit.

Lunny Sr. then said he had actually signed the first version of the 2004 Special Use Permit but that he had not sent it back to NPS. Kevin Lunny subsequently provided the OIG with a copy of the Special Use Permit, which Neubacher had signed in December 2004, which reflected that Lunny Sr. had signed it on April 11, 2007, 12 days prior to the date the Lunnys requested an investigation by the OIG.

Lunny Sr. conceded that he had more than 90 Animal Units on the ranch at a time, a situation he attributed to raising grass-fed, organic beef. He explained that it took almost twice as long for his grass-fed cows to gain enough weight before they could be sold than it would if they were eating feed. He said that since his cattle had to stay on the ranch longer than they used to before his operation became organic in 2004, more calves were being born, which also increased the number of animals. Lunny Sr. opined that it was unreasonable for NPS to be concerned about the number of Animal Units on the G Ranch because Neubacher knew he was going to convert the ranch into an organic operation and because Neubacher did not make the number of cows at the ranch an issue until a Rangeland Manager began working at PRNS.

According to the Rangeland Manager, Lunny Sr. had agreed to a Special Use Permit allowing the G Ranch to maintain a maximum of 90 Animal Units on the ranch not to exceed 1,080 Animal Unit Months a year since 1993. He added that PRNS used the Animal Unit Months pricing method in all of its ranch Special Use Permits.

PRNS records indicate that during a meeting on January 30, 2007, PRNS informed the Lunnys that their “cow count” far exceeded the amount allowed in the Special Use Permit based on several counts by the Rangeland Manager, and the Lunnys agreed to provide PRNS with a copy of their grazing plan. On February 15, 2007, the Rangeland Manager informed Neubacher that by his calculations, the Lunnys had already reached their allotment of 1,080 Animal Unit Months for the year. ***Agent’s Note:*** *At this time, the original version of the Special Use Permit was the only version under negotiation.*

As of March 21, 2007, the Lunnys had not provided NPS with information concerning the number of animals in their grazing operation. On that date, Neubacher notified them that they were going to have

met their allowable Animal Unit Months of 1,080 annually for the year by April 14, and he instructed them to remove the cattle from the ranch by that date.

Neubacher's March 21 letter further explained that the number of cattle grazing was out of compliance with a biological opinion issued by the U.S. Fish and Wildlife Service on grazing impacts within PRNS for the protection of endangered or threatened animal and plant species. It was not until this date that NPS sent the Lunnys the second version of the Special Use Permit. Neubacher explained that changes had been made to the previous Special Use Permit in part to "further clarify allowable stocking rates" on the ranch.

At some point between March 21 and April 6, 2007, the Lunnys submitted a handwritten, undated grazing plan to NPS. On April 10, the Rangeland Manager informed Neubacher that the G Ranch still contained "approximately 250 animal units," even though their grazing plan stated that they would have only 147 Animal Units on the ranch for the month of April. He noted, "They are not even compliant with their own plan."

In addition to examining the issue of the allotted number of cattle on the ranch, we addressed the Lunnys' contention that they were entitled to cut silage from Field #11 with Neubacher. According to Neubacher, years ago, Special Use Permits for the G Ranch authorized the Lunnys to cut more than the current Special Use Permit allowed, but over the years, the Lunnys had requested that NPS reduce the amount of silage they could cut so that the Lunnys' permit fee would be lower. On January 30, 2007, Lunny family members met with PRNS officials about issues concerning the unsigned G Ranch permit. At that time, the Lunnys indicated that they believed the silage map attached to the permit was inaccurate because it was missing an approved field, an issue which PRNS agreed to review.

In February 2007, Neubacher notified the Lunnys that PRNS had reviewed its silage maps as Kevin Lunny had requested. He wrote, "Based on our review, the 190 acres designated on the map attached to the permit...is the only area authorized for silage." According to Neubacher and the Rangeland Manager, the silage area for the ranch was mapped by the Natural Resources Conservation Service in 1992.

According to the Rangeland Manager, the Lunnys "[grazed] down their authorized silage areas" by having too many Animal Units, which left them nothing to cut in their permitted area. In a May 2007 briefing statement, Neubacher explained that he was aware that the G Ranch was an organic beef operation but noted that the Lunnys had exhausted their annual limit on Animal Unit Months in 4 months. He and the Rangeland Manager indicated that NPS had repeatedly denied the Lunnys' request to cut silage on Field #11 because the permit did not allow the cutting of more than 190 acres of silage in order to comply with the FWS biological opinion.

We learned that the permit fee for the use of the G Ranch was adjusted in the current Special Use Permit based on an appraisal of the premises in 2004 and that the Lunny family disagreed with that fee. The Lunnys disputed the permit fee set by that appraisal and requested a rate reduction based on improvements they had made to the ranch. In October 2006, Neubacher informed them that their "...proposal to offset permit fees with the cost of improvements is not appropriate as improvements are already factored into the appraisal." The PRNS Special Use Coordinator recalled that the Lunnys also offered their contention that they were good stewards of the land as a basis for a fee reduction.

Both versions of the permit contain the following language:

The annual rental rate for this Permit shall be established by Permitter in an appraisal of the Premises (“Appraisal”) and such Appraisal shall be conducted in accordance with the Uniform Appraisal Standards for Federal Lands....

PRNS provided a copy of the appraisal of the G Ranch to Joe and Joan Lunny in July 2004 and again in October 2005 to apply to the “next five-year permit renewal period” of the Special Use Permit. According to Neubacher, after PRNS sent the Lunnys the new appraisal, they did not respond to requests to discuss the Special Use Permit for a long time.

We also learned that although the Special Use Permit in question was to be in effect from December 7, 2004, through December 6, 2009, a term of 5 years, the Lunnys expressed a desire for their Special Use Permit to be in effect for more than 5 years. Neubacher officially informed them in October 2006 that it was not possible to extend the term of the permit beyond 5 years because Special Use Permits were “capped nationwide at five (5) years....” Neubacher’s explanation is consistent with NPS Director’s Order 53, which states, “Unless for experimental purposes or other short term considerations, permits for agricultural uses should be issued for a period of 3 to 5 years.”

At the onset of this investigation, Kevin Lunny told us that the permit for the G Ranch had remained unsigned since December 2004. However, a year later, on April 24, 2008, he informed the OIG that, although his parents had not signed a new Special Use Permit for the G Ranch, his family and NPS worked out an agreement to abide by the 2004 Special Use Permit that his father, Joseph Lunny, Sr., had signed in April 2007 but had never sent to NPS. Lunny said they agreed to abide by that version of the Special Use Permit because it was not as restrictive as versions of the Special Use Permit that NPS had since put forth.

### ***Freedom of Information Act Requests By Corey Goodman***

While this investigation was ongoing, Corey Goodman filed four Freedom of Information Act (FOIA) requests and three FOIA appeals, with a supplemental request added to the third one to obtain information from NPS. On September 27, 2007, in a letter to the OIG, he contended that NPS had not complied completely with his requests. Goodman claimed that he had not received the following information as requested in a timely manner: legacy seal data from PRNS dating from 1973 to 1996, the key to abbreviations and codes by which to decipher harbor seal data that NPS provided him for the years 1997 through 2007, a version of the Sheltered Wilderness report dated May 8, 2007, and certain e-mails between PRNS Senior Science Advisor Sarah Allen and USGS Scientist Roberto Anima and between Allen and USGS Scientist Janet Thompson. He also alleged that PRNS had provided Sierra Club spokesman Gordon Bennett with information more readily than the park had provided him with information.

On three occasions in May 2007, Goodman filed FOIA requests with Neubacher. In his May 12 and 13, 2007 FOIA requests, Goodman asked for harbor seal monitoring data pertaining to Drakes Estero from 1973 through the “day you provide the data” in 2007. ***Agent’s Note:*** *Goodman had surmised that PRNS had raw (quantitative) data from 1973 through the present because NPS claimed “over 25 years of [harbor seal] data” and because Allen “published a paper in 1999 with graphs based on her data from 1973 to 1996.” During the hearing before the MCBS in May 2007, Allen began her presentation with the following introduction: “My name is Sarah Allen, and I’m a scientist with the National Park Service. And, more specifically, I’ve been studying the ecology of Drakes Estero for almost 30 years. I completed my master’s thesis on the harbor seals in Drakes Estero, so I have some familiarity with that population.” Later during the presentation, she stated, “The damage of the commercial oyster operations on Drakes Estero is more easily documented, because **the Park Service***

*has over 25 years of continuous monitoring data from Drakes Estero” (Emphasis added). She immediately followed that statement with information about seals and the significance of Drakes Estero as a “major seal nursery.” In fact, Allen collected the majority of the seal data that she referenced prior to beginning her career with NPS; therefore, most of that data was not generated by NPS.*

Jon Jarvis, the Director of the Pacific West Region of NPS, responded to Goodman’s first two May 2007 FOIA requests via a letter dated June 13, 2007, in which NPS provided Goodman with historical reports from 1988 through 2006 regarding harbor seal numbers. Jarvis responded to Goodman’s third FOIA request of May 29, 2007, via a letter dated August 8, 2007. At that time, Jarvis wrote of the harbor seal data, “Primary data for years prior to 1996 is not contained in the records of the National Park Service. Consequently, we cannot provide this early primary data in response to your FOIA request.”

On December 19, 2007, Goodman made his fourth FOIA request, which he e-mailed directly to FOIA Officer Holly Bundock. At that time, he remained steadfast that PRNS was withholding “legacy seal data for Drakes Estero...from 1973 to 1996 inclusive” from him.

In regard to the “legacy seal data” from 1973 through 1996, Bundock told the OIG:

...[Allen] and [Neubacher] have assured me that we have given [Goodman] everything that exists in our files. You know, [Allen] didn’t work for us until 1997. She worked in a lot of places, including the Point Reyes Bird Observatory. And so...she may have created primary data, but it belongs to the Bird Observatory or wherever she worked. So we believe we’ve given [Goodman] everything, based on what [Neubacher] and [Allen] have assured Jon Jarvis and myself.

When investigators asked Allen what she provided in response to FOIA requests filed by Goodman for harbor seal data, she responded:

He asked for the legacy databases. And our legacy databases that he was pointing out had to do, one, with elephant seals, which he’s not interested in...And, two, it was harbor seals at another site, which was at the Farallon Islands and at Double Point. They weren’t Drakes Estero. The data was collected prior to my working in the National Park Service, and they’re either with PRBO [Point Reyes Bird Observatory] when I worked there or part of my thesis. So we gave him reports that represented those data, but I didn’t have a database....

As the data manager for PRNS, the Ecologist maintained that he was responsible for, and familiar with, all seal-related data held within his office. On February 11, 2008, the OIG received a letter from the Ecologist, which stated the following, in part:

We’ve submitted all of the Drakes Estero harbor seal data housed on our server, and more....With data beginning in 1996, these databases contain our entire Drakes Estero harbor seal data set. Although data was collected prior to this time, that data does not exist with the National Park Service in either digital or hard-copy form. I have searched diligently and thoroughly, and the NPS simply does not have any more Drakes Estero harbor seal data.

The PRNS Ecologist also emphatically told the OIG, “Any of the claims made by NPS about the impact of Drakes Bay Oyster Company upon seals in Drakes Estero are based upon data that has already been given to Goodman.”

DOI FOIA Policy as per 43 CFR 2.7(d) (1) states the following:

In order for a record to be considered subject to your FOIA request, it must be in the bureau's possession and control at the time the bureau begins its search for responsive records. There is no obligation for the bureau to create or compile a record to satisfy a FOIA request (for example, by combining or compiling selected items from manual files, preparing a new computer program, calculating proportions, percentages, frequency distributions, trends and comparisons, or creating maps)....

In regard to Goodman's second complaint about NPS not providing him with a "key" by which to decipher harbor seal data that the agency provided him from 1997 through 2007, in an e-mail message to the OIG dated March 5, 2008, Goodman conceded that NPS had, in fact, provided him with the means to interpret the seal data that NPS ultimately provided him.

Another reason Goodman related that he was unsatisfied with NPS' response to his FOIA requests was his contention that Jarvis only provided two versions of the Sheltered Wilderness report – one dated February 9, 2007, and another dated May 11, 2007. Goodman maintained that there was at least one other version of the report, dated May 8, 2007, that NPS would not turn over to him. As previously mentioned in this report, the OIG Computer Crimes Unit determined that there were only two versions of the Sheltered Wilderness report, which match the versions NPS provided to Goodman.

In Goodman's third FOIA request of May 29, 2007, he also requested documentation of "All e-mails...and correspondence between PRNS staff and Dr. Roberto Anima...from January 1, 2007..." to May 29, 2007.

In response to that request, dated August 8, 2007, NPS provided him with copies of the following four e-mail messages between Allen and Anima: one dated May 15, 2007, sent at 17:59 Pacific Standard Time (PST), one dated May 30, 2007, at 8:07 Mountain Standard Time (MST), another one dated May 30, 2007, at 8:48 MST, and, finally, one dated June 4, 2007, at 8:16 MST.

Goodman was not satisfied with NPS' response to his third FOIA request in part because he surmised that another e-mail between Allen and Anima had to exist, dated either May 14 or May 15, 2007. He arrived at that conclusion based on the e-mail message NPS sent him, dated May 15, 2007, in which Allen began her message to Anima by writing, "Many thanks for your quick reply...." Goodman described the likely missing e-mail exchange as a potential "smoking gun."

Goodman again requested e-mails between Anima and Allen in his fourth FOIA request, dated December 19, 2007. In that request, he wrote, "...I requested all emails between Sarah Allen and Roberto Anima, particularly in May of 2007 (in the 2 weeks following May 8, particularly around May 14 and 15). You sent me emails with a striking gap of the key communication between them. Could you please send the complete set."

NPS responded to Goodman's fourth request via a letter from Pacific West Region Director Jon Jarvis, dated January 25, 2008. Regarding the e-mails, Jarvis wrote that the same four aforementioned e-mails between Allen and Anima "exist in park files" and were enclosed. He added, "No additional records exist that are responsive to your request."

During a consensual search of Allen's office conducted in August 2007, investigators recovered one e-mail dated May 15, 2007, which Anima sent to Allen at 13:31 MST, which NPS did not submit to Goodman, in a



file labeled "Communication." *Agent's Note: Our Computer Crimes Unit determined that the e-mail in question was not contained in Allen's active or archived NPS e-mail file, leading the Computer Crimes Unit to deduce that it had been deleted from her e-mail file on the NPS e-mail system.*

The May 15, 2007 e-mail that Goodman did not receive as a result of his FOIA requests contained the following text from Anima to Allen:

Hi Sarah,

After reading the Kinsey-Goodman Testimony and the statements made in the Pt. Reyes Light, and the Coastal Post, I really can't support the statements made that:

'Research has identified oyster feces as the primary source of sediment in the Estero, and this sediment smother [sic] native species.'

or

'Futhermore oyster feces add sediment to the eelgrass beds of the Estero. Researchers from the U.S. Geological Survey identified the feces of oysters – as much as a metric ton per 60 meter square oyster raft – as the primary source of sedimentation, which degrades eelgrass habitat and its ability to support abundant marine life.'

After re-reading my thesis I do suggest that the quiet water environment of the upper parts of the estero could allow for the deposition of silt-sized material in the form of feces and pseudofeces produced by oysters. And that once deposited the material is resistant to erosion. I end by stating that more research is needed to ascertain what amount of silt-sized material is being produced by oysters in the lagoon.

I did not directly study the amounts or the areal extent of the deposition of feces in the estero. The statements made in the thesis were based on observations and literature cited to support the observations. No hard evidence of the effects of oysters on fine sediment accumulation were [sic] made.

I wish I could have been more help.

Roberto

In his September 2007 e-mail to the OIG summarizing his complaints regarding NPS' perceived insufficient response to his FOIA requests, Goodman also surmised that there was a "gap" in the e-mail messages between Allen and USGS scientist Janet Thompson that he had received pursuant to his FOIA request of May 29, 2007. According to Goodman, he received copies of e-mail messages between Allen and Thompson dated March 5, May 6, May 7, and May 10, 2007. Goodman speculated that additional correspondence most likely existed between Allen and Thompson between March 5 and May 6, 2007.

The only e-mail between Allen and Thompson that we found that was not provided to Goodman was the one from Thompson to Allen dated March 9, 2007. In it, Thompson wrote, "I'm now back but will be gone next week. Isn't this fun. Back in the office March 19."

On October 12, 2007, investigators took a sworn statement from an NPS Information Technology Specialist in which he swore that no person within NPS or otherwise had directed him to “alter, delete, or create any record or paper via electronic media.”

In addition to questioning whether he had received all of the e-mail correspondence he requested from NPS, Goodman questioned NPS’ use of FOIA Exemption 5, the “deliberative process privilege,”<sup>xxvi</sup> as a reason for initially withholding 2007 harbor seal data from him in response to his May 13, 2007 FOIA request. Goodman maintained that this was not an appropriate response to his request because the information he had asked for was not subject to deliberation since he had asked simply for data, not an opinion about that data. On June 27, 2007, Goodman filed an appeal to Jarvis’ FOIA response with the Solicitor’s Office on the grounds that the data he had requested was not subject to the deliberative process.

In referencing that exemption, Jarvis explained the following to Goodman in a letter dated June 13, 2007, regarding the 2007 harbor seal data that he had requested:

We are withholding the draft records pending the final annual report under FOIA exemption 5 (5 USC 552(b)(5)) which is designed to protect those inter-agency and intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency. This exemption includes information that would be protected under the deliberative process privilege. The purpose of this privilege is to encourage open and frank discussions on matters of policy between subordinates and superiors, to protect against premature disclosure of proposed policies before they are finally adopted, and to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency’s action.

When the OIG asked Jarvis if the deliberative process would apply to raw data, such as the number of seals on any given day in the estero, Jarvis said the following:

Potentially, but probably unlikely...generally...an individual goes to the field and collects data....I guess in theory that stuff’s available under FOIA. But generally that needs to be put into some sort of usable format...put into an Excel web sheet or...some sort of database before it’s usable....And there’s, in some cases, a quality review that it has to go through before it goes through that. And I would consider some of that internally deliberative. But I don’t know the specifics on this one.

On June 27, 2007, Goodman filed a FOIA appeal to Solicitor David Bernhardt. In it, he argued that NPS’ use of Exemption 5 to deny him 2007 seal data was inappropriate. Goodman subsequently submitted a supplemental appeal on July 19, 2007, as an addendum to his June 27 appeal to the Solicitor’s Office, in which he questioned the use of Exemption 5.

On August 8, 2007, Jarvis responded to Goodman in the following way:

With regard to the data for 2007, the data collection season for 2007 ended as of July 31....FOIA does not require agencies to create records in order to respond to requests. As we discussed at the July 21 meeting [with Senator Feinstein], we have agreed, as a courtesy, to expedite data entry for 2007. This data entry and error checking should also be completed within the next week, and the park will provide the 2007 data, including subsite data on Drakes Estero, on disk.

In that same letter, Jarvis informed Goodman that, regarding the harbor seal data from the years 1996 through 2006, NPS planned to provide that information to him on “one or more disks by August 13, 2007.” Jarvis explained the following to Goodman:

Summary data and associated metadata for the years 1996 to 2006 exist in one or more park databases. This information must be checked before transmittal because the database(s) may contain information about Volunteers in Parks (VIPs) that is exempt from disclosure under FOIA exemption 6 (5 USC 552 (b)(6)). Exemption 6 permits an agency to withhold information about individuals in ‘personnel and medical files and similar files’ when the disclosure of such information ‘would constitute a clearly unwarranted invasion of personal privacy.’

In that same letter, Jarvis informed Goodman that although prior to his FOIA requests the databases did not contain subsite (specific sites within the estero) information for Drakes Estero, NPS had agreed to enter subsite data, where available, into the database as a “courtesy” for Goodman. Jarvis informed Goodman that NPS would finish entering subsite data for Drakes Estero from 1996 to 2006, a process which “should be completed within the next week.”

According to Goodman, on August 13, 2007, Neubacher sent him three CDs containing harbor seal data from 1997 to 2007.

On January 25, 2008, Jarvis provided Goodman with the 2007 seal data and informed him, “Since the completion of your earlier FOIA request, the park staff conducted additional error checking and review of the harbor seal data set. We are therefore providing you with the most recent versions of the complete harbor seal dataset and the Drakes Estero subsite dataset....”

In his FOIA appeal dated June 27, 2007, Goodman contended that NPS failed to respond to his first two FOIA requests of May 12 and May 13, 2007, in a “timely manner.” Specifically, Goodman alleged that Jarvis’ response to his (Goodman’s) first two FOIA requests, via the June 13, 2007 letter, fell outside the 20 workdays allowed for a response. According to 5 USC 552(6)(A):

Each agency, upon any request for records...shall...determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore....

Goodman e-mailed his first two FOIA requests to Neubacher on Saturday, May 12, and Sunday, May 13, 2007, making the first qualifying day of receipt of those requests Monday, May 14, 2007. Counting 20 qualifying days from May 14 – and excluding Monday, May 28, which was a federal holiday (Memorial Day) – Goodman should have received a response by June 12, 2007. Thus, NPS was apparently 1 day late in responding to Goodman’s first two FOIA requests.

E-mail correspondence from PRNS FOIA Officer Ann Nelson to PRNS staff members indicates that she was attempting to respond to Goodman’s first two requests in a timely manner. On May 15, 2007, Nelson sent two messages to Bundock. The first one referenced Goodman’s May 12 request, and Nelson informed Bundock that she and Allen would be working on it “ASAP.” In the second e-mail from Nelson to Bundock that day, Nelson informed Bundock of Goodman’s second request, which “covers basically the same information” as his first request.

Bundock responded to Nelson's e-mails later that morning by telling her not to create records in response to Goodman's request and by stating that she had 20 days to respond to the requests. Bundock also informed Nelson that she (Nelson) "may not be giving him" the seal data he had requested "in light of pre decision or financial info or whatever...."

On June 14, 2007, Nelson sent an e-mail message to Allen, a PRNS Marine Ecologist, and a PRNS Wildlife Biologist regarding Goodman's May 29 FOIA request. In her message, Nelson asked Allen, the PRNS Marine Ecologist, and the PRNS Wildlife Biologist to check for, among other items, "...any email, correspondence, etc., between PRNS staff and Roberto Anima...POST 1/1/07...."

Nelson followed up her June 14 e-mail with one dated June 20, 2007, to the same recipients. She wrote, "Would you please let me know if you do not have anything in your files re this FOIA, and/or please provide the documents to me – I would LOVE it if you would give them to [sic] in hardcopy form ASAP...I need to get this out by no later than Monday, June 24. Thanks...."

On July 19, 2007, Goodman provided supplemental information to his third appeal with the Solicitor's Office by claiming that there was a "double standard" in the way NPS supplied information to members of the public. Specifically, Goodman referenced an article that Gordon Bennett of the Sierra Club had published in the July/August issue of the *Sierra Club Yodeler*. Goodman wrote the following:

While I was denied access to 2007 harbor seal data based on deliberative process privilege...Bennett...appears to have free access to this data, and refers to specific 2007 harbor seal pup numbers that come directly from PRNS. Moreover, while my 3<sup>rd</sup> FOIA request from May 29 for letters and documents from USGS researcher Janet Thompson is now overdue and unresponsive, it appears as if...Bennett...has access to those documents, since he freely quotes a USGS researcher's (likely to be Thompson) findings on nutrient levels in the Estero....

In reference to seal numbers from 2007 in Drakes Estero, the article reflects that "expanded oyster operations and oyster bags placed in seal nursery areas have reduced baby seals on the middle sandbars to...less than 10 so far in 2007."

According to Bennett, he talked to Allen about their mutual interest in marine mammals, among other issues. As a member of a volunteer group called "Beach Walk," Bennett said he patrolled Drakes Beach. He said there were times he would simply ask for materials from either Neubacher or Allen and he would receive the information. Bennett said that when he was writing the *Yodeler* article, he asked Allen for a copy of a letter from a female USGS scientist, and she provided it to him informally. He said he also obtained specific numbers pertaining to seals for that article from Allen without filing a FOIA request. According to Bennett, Allen shared seal data with all of her seal volunteers. He added that it was a "standard thing" for them to talk about seal numbers.

When asked if the people who volunteered to count the seals were regularly discussing seal numbers with Allen, Jarvis said, "... in many cases, they have ready access to this information, because they're participants in it, in the gathering of it, probably in its raw form, not so much in its sort of assembled form."

In an effort to explain why Goodman was initially denied the 2007 harbor seal data, Jarvis explained that NPS collected data for its inventory and monitoring program, which was funded by federal funds and was "publicly available." He added the following:

...we don't require FOIAs generally to get this kind of information...because it's...gathered with Federal money, in...most cases...it's publicly accessible information. But we generally don't just toss it out there for anybody to interpret it. It has to go through some protocol review quality control to make sure that it's good information. You don't want just all kinds of things out there....

**Agent's Note:** *Although we confirmed that Bennett was able to obtain some information from PRNS with only an informal verbal request, it should be noted that the information that Goodman sought through the FOIA process was different from the information Bennett obtained informally.*

Goodman received a response letter dated July 31, 2007, from the Solicitor's Office regarding his appeal about Bennett's access to information advising that no one had reviewed his appeal due to lack of time and informing him that he could seek "judicial appeal."

According to FOIA Appeals Officer Darrell Strayhorn, Goodman was dissatisfied with NPS' August 8, 2007 response to his May 29, 2007 request and wanted to challenge a statement that NPS made in its letter. However, Strayhorn informed him that his time limit for appealing that letter had expired and that she could no longer review the issue. She explained that Goodman had only 30 work days from the date he received a response to file an appeal.

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<sup>i</sup> PRNS falls under the National Park Service, which uses the acronym "PORE" to represent PRNS.

<sup>ii</sup> House Report (Interior and Insular Affairs Committee) *Point Reyes National Seashore Act* No. 94-1680, September 24, 1976 (To accompany H.R. 8002), 3.

<sup>iii</sup> *Point Reyes National Seashore – Marin County California*, (accessed March 18, 2008); available from <http://BeachCalifornia.com>.

<sup>iv</sup> Paul Sadin, "Managing a Land in Motion: An Administrative History of Point Reyes National Seashore," *National Park Service*, October 2007, 129.

<sup>v</sup> NPS, "Tracts Conveyed Between 01/01/1950 and 05/20/2003 for Point Reyes NS," computer run date April 20, 2003, I, File L1425 Land Acquisition Priority List and LWC Fund Calls, Land Files, CCF, PRNS.

<sup>vi</sup> Ibid

<sup>vii</sup> National Park Service Director's Order No. 25: Land Protection, dated January 19, 2001.

<sup>viii</sup> National Park Service Grant Deed with Johnson Oyster Company, dated November 9, 1972.

<sup>ix</sup> Interview of Joseph Lunny, Sr., conducted on September 26, 2007.

<sup>x</sup> Deanne Kloepfer, *State of the Parks - A Resource Assessment Point Reyes National Seashore*, (Ft. Collins, CO: National Parks Conservation Association, 2002), 4.

<sup>xi</sup> *An Act to Establish the Point Reyes National Seashore in the State of California*, Public Law 657, 87<sup>th</sup> Congress., 2<sup>nd</sup> sess. (September 13, 1962).

<sup>xii</sup> PRNS, "Statement for Management, Point Reyes National Seashore, 1990," rev., Planning and Management Documents, PRA, 10-11.

<sup>xiii</sup> NPS, "Briefing Statement: Expiration of Residential RUOs," February 18, 1999, File A2623 Situation Rpts – Briefing Statements, Administrative Files, CCF, PRNS.

<sup>xiv</sup> NPS, "Grazing Permits, Lease Lengths, and Fees at Point Reyes National Seashore," Briefing Statement 2004.

<sup>xv</sup> House, *Point Reyes National Seashore Wilderness Act*, 94<sup>th</sup> Congress, 1976, Public Law 94-544, (accessed March 21, 2008); available from Congressional Universe.

<sup>xvi</sup> Ibid

<sup>xvii</sup> Ibid

<sup>xviii</sup> *Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service* (accessed March 24, 2008); available from <http://fws.gov/lawsdigest/WILDRNS.HTML>.

<sup>xix</sup> Department of Interior, *Final Environmental Statement, Proposed Wilderness Point Reyes National Seashore*, prepared by Western Region, Regional Park Service, Department of Interior, April 23, 1974, p 1.

<sup>xx</sup> Department of Interior, *Final Environmental Statement, Proposed Wilderness Point Reyes National Seashore*, prepared by Western Region, Regional Park Service, Department of Interior, April 23, 1974, p 18.

<sup>xxi</sup> House Report (Interior and Insular Affairs Committee) *Point Reyes National Seashore Act* No. 94-1680, September 24, 1976 (To accompany H.R. 8002).

<sup>xxii</sup> Field Solicitor, Office of the Solicitor, San Francisco, California, "Point Reyes Wilderness Act," to Superintendent,

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Point Reyes National Seashore, February 26, 2004.

<sup>xxiii</sup> NPS Management Policies Manual, Section 6.2.2.1, 2001.

<sup>xxiv</sup> House Report (Interior and Insular Affairs Committee) *Point Reyes National Seashore Act* No. 94-1680, September 24, 1976 (To accompany H.R. 8002), 1.

<sup>xxv</sup> Field Solicitor, Office of the Solicitor, San Francisco, California, “Point Reyes Wilderness Act,” to Superintendent, Point Reyes National Seashore, February 26, 2004.

<sup>xxvi</sup> Department of Interior policy per 43 CFR Part 2, Appendix E to Part 2 – FOIA Exemptions – Exemption No. 5) “Inter-agency or intra-agency memorandums or letters, which would not be available by law to a party other than an agency in litigation with the agency.”