

NPS Misrepresented and Concealed Acoustic Data
And Deceived the Public and Peer Reviewers
of the Draft Environmental Impact Statement (DEIS) on DBOC
EPILOGUE



Why NPS should not investigate NPS

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These slides are intended to supplement and not replace the written complaint.

EPILOGUE: Why NPS should not investigate NPS

Conclusions



1. According to Section 3.8A of DOI Policy, allegations of scientific misconduct should be referred to DOI Scientific Integrity Officer (SIO) Dr. Morgenweck. However, this case involves false representations and concealment of data and deception, key elements of the definition of fraud. Cases of fraud are referred to the DOI Inspector General.
2. There are also conflicts of interest that mandate that this case should be handled by an agency other than NPS. Those conflicted include:
 - i. Dr. Morgenweck, DOI SIO and
 - ii. Dr. Machlis, NPS SIO.
3. Dr. Machlis hindered scientific analysis by failing to provide access to relevant published data, in violation of DOI Code of Scientific and Scholarly Conduct.

Section 3.8A of Department of the Interior Policy

“Allegations of scientific and scholarly misconduct with respect to DOI employees, volunteers, contractors, cooperators, partners, permittees, leasees, and grantees must be submitted in writing. The Department will consider allegations submitted within 60 days of discovery of alleged misconduct. Allegations may be submitted by individuals or entities, internal or external to the Department. Misconduct includes intentional fabrication, falsification, or plagiarism and is not the result of honest error or difference of opinion, such as with a scientific and scholarly process or a management decision. Cases of fraud, waste, and abuse should be directly referred to the Office of Inspector General.”

This case involves deception. The word “deception” is not found in the Interior Scientific Integrity Policy. It is not part of the definition of scientific misconduct. Rather, it is part of the definition of fraud.

Cases of fraud should be referred to the Office of Inspector General

This case involves false representations and concealment of data – of facts and other information that should have been disclosed. It involves deception.

According to Black's Law Dictionary, these are key elements of the definition of fraud:

“An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Any kind of artifice employed by one person to deceive another.”

Senator Feinstein, in her March 29, 2012 letter to Secretary Salazar, wrote:

“It is my belief that the case against Drakes Bay Oyster Company is deceptive and potentially fraudulent.”

DOI Scientific Integrity Officer Dr. Morgenweck is conflicted

- Dr. Morgenweck, Interior's SIO, commissioned the ATKINS peer-review of the DEIS "*in recognition of high interest in the science.*"
- Dr. Morgenweck then released the ATKINS peer-review, publicly praising it for accomplishing "*exactly what we were seeking ...*"
- We now know that the ATKINS report was tainted by NPS false representations and concealment of data in the DEIS.
- The peer-reviewer of the soundscape analysis, Dr. Christopher Clark of Cornell University, was, by his own words, "*deceived.*" Upon seeing the origin of the data he reviewed, and the real data collected by ENVIRON, Dr. Clark changed his major conclusion.
- When the ATKINS 2012 peer-review report came back, unnamed NPS and VHB employees evidently remained silent and failed to alert Dr. Morgenweck that the peer-reviewer thought the data were from DBOC boats and equipment when they were not.
- It appears that Dr. Morgenweck was deceived and is now a subject of this investigation to be questioned by the investigators.

NPS Scientific Integrity Officer Dr. Machlis is conflicted

- Dr. Machlis has a different conflict-of-interest. He reports to the NPS Director (Jon Jarvis) who has been involved in issues of disputed science for six years, pre-dating his appointment as Director.
 - The PORE 004 microphone location was selected on July 14, 2009. The location of this sound-sensitive area was selected by NPS employees who reported to Mr. Jarvis. Why was that location picked, and why were those data dismissed in DEIS?
 - Whomever conducts this investigation is unlikely to know from the outset who in NPS or DOI was involved going back to the July 14, 2009 meeting (and events and communications leading up to it and emerging from it), to the writing and revising of the VOLPE 2011 report, to the writing and revising of the NPS DEIS. It may involve many people, including NPS leadership.
- The investigation will need to probe the original goals of the VOLPE soundscape analysis and placement of the PORE 004 microphone, decisions that were made back when Mr. Jarvis was Pacific West Regional Director and Don Neubacher was PRNS Superintendent.

Dr. Machlis has another conflict-of-interest that came to the fore recently ...



Scientific and Scholarly Integrity Policy at Department of Interior

Over the past week, NPS has blocked access to published data and hindered my scientific analysis of the acoustic data. Dr. Machlis, NPS Scientific Integrity Officer, and the Science Advisor to Director Jarvis, has been involved in this violation of the DOI Code of Scientific and Scholarly Conduct.





Scientific and Scholarly Integrity Policy at Department of Interior

I requested VOLPE study acoustic data from the lead author at the Department of Transportation on April 2. One week later she told me DOT was giving the data to NPS scientists at Fort Collins and I should contact them.

For nearly a week, NPS Dr. Kurt Fristrup and Damon Joyce were cooperative and collegial, responding to my emails, supplying me with some of the requested data, and providing guidance on interpretation of data and clarification of methods.

Beginning on Friday April 13, 2012, they abruptly stopped responding to my emails and stopped supplying the requested data – including one outstanding request that I had made from the outset – the actual audio recordings from microphone PORE 004. Emails went unanswered, a pattern quite different from their timely replies prior to April 13.



Scientific and Scholarly Integrity Policy at Department of Interior

After multiple requests went unanswered, on Monday April 16 I wrote to Dr. Machlis, the Science Advisor to NPS Director Jarvis, the NPS Scientific Integrity Officer, and the top scientist at NPS, and asked him to help facilitate my data request so I could complete my analysis and submit this compliant. He did not respond. I asked him again on Wednesday April 18.

A day later, on Thursday April 19, Dr. Machlis wrote:

"I have received your emails and review each carefully as it comes in. We are following DOI policies on allegations of scientific misconduct."

Dr. Machlis failed to comment on my data request and gave no assurance that I would receive the requested data (which I have not from NPS). Emails to the Fort Collins scientists also went unanswered for one week.



Scientific and Scholarly Integrity Policy at Department of Interior

Finally, on Friday April 20, I was contacted by the branch chief, not the scientists, and told I would have to file a FOIA request to obtain the audio data. My experience with DOI FOIA requests is that FOIA is used as a tool to block access, not facilitate it. My last FOIA request to DOI took eight months to process, and the DOI response was completely (and knowingly) non-responsive.

The NPS change of behavior represents an inexplicable double standard. One week the NPS scientists were collegial and sharing data in accord with the DOI Code of Scientific and Scholarly Conduct. The next week they went silent, contrary to the same Code, and finally told me I must file a FOIA request to obtain the relevant data, data I requested 18 days earlier. All of this has hindered my scientific analysis.



Code of Scientific and Scholarly Conduct



- Ten “I will” statements that apply to all Departmental employees and volunteers, contractors, cooperators, partners, permittees, leasees, and grantees to whom this policy applies
- Six additional “I will” statements that apply to scientists and scholars
- Three “I will” statements that apply to decision makers in addition to the ten that apply to all employees subject to this policy



Code of Scientific and Scholarly Conduct

Dr. Machlis appears to be a participant in the NPS decision to prevent me from obtaining relevant data (primary audio recordings) from a published study (VOLPE 2011 acoustic study of Point Reyes National Seashore), and in so doing, has knowingly hindered my scientific analysis of those data. The DOI Code of Scientific and Scholarly Conduct states:

“I will not intentionally hinder the scientific and scholarly activities of others ...”

“I will fully disclose methodologies used, all relevant data ...”

Why did Dr. Machlis participate in withholding key data?

Why did Dr. Machlis participate in hindering my scientific analysis?

Why did Dr. Machlis sit back while data were withheld and FOIA was used as a political tool to block access to data, rather than facilitate it?

NPS cannot investigate itself, particularly when its Scientific Integrity Officer is involved in behavior that does not adhere to the DOI Code.



Scientific and Scholarly Integrity Policy at Department of Interior

Summary

- This case is not just about allegations of scientific misconduct. It also involves allegations of false representations of data, concealment of data, deception, and possible fraud.
- “Deception” is not found in DOI Scientific Integrity Policy. It is not part of definition of scientific misconduct. It is part of the definition of fraud.
- Section 3.8A of the DOI Policy states: “*Cases of fraud, waste, and abuse should be directly referred to the Office of Inspector General.*” The allegations contained in this complaint involve fraud, and therefore warrant referral to the DOI OIG.
- Dr. Machlis, NPS SIO, has conflicts-of-interest concerning this case. He is also now a subject of the investigation, rather than simply the investigator. Dr. Machlis cannot oversee an investigation in which he is a subject. NPS cannot be entrusted to investigate itself.