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An Open Letter to the Members of the New National Academy of Sciences Panel on NPS Science at Drakes Estero

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We wish to share with you our experience from nearly 6 years of covering the story of National Park Service Science at Drakes Estero. Our purpose is to provide you with an understanding of the stunning arc of NPS unethical conduct disguised as science. It is important for you to know as much as you can about the context of this conflict, as the NPS has created multiple generations of hypothesis of harm which when subjected to scientific scrutiny, have been shown to be based on fraudulently applied data, withholding of key information, obtuse statistical manipulations and misrepresentations to public officials. We are restricting ourselves to the NPS' scientific conduct, though their behavior in the political and regulatory arenas are equally unacceptable.

If the Panel is to properly advise Congress and the American public on this matter, it is vital for you to understand the source and selection of not only the data, but the manner in which it has been manipulated, beginning in 2006. In January of that year, the Park Service began their politically-motivated attempts to close Drake's Bay Oyster Company (DBOC). In the 2006 "Sheltered Wilderness Report" (withdrawn from the NPS website at the direction of then-NPS Director Mary Bomar at the recommendation of Senator Feinstein) NPS made undocumented claims of serious environmental damage. NPS also claimed to Marin County Supervisor Steve Kinsey that they had data to prove criminal environmental behavior by Kevin Lunny of DBOC. As the NAS determined in its study, no such data existed at the times these claims were first made, nor does it exist now, despite the NPS' subsequent attempts to manufacture data and create controversy over the contents of the NAS report.

For NPS to establish one of its major claims of harm—that the oyster operations were the principal source of sedimentation in Drakes Estero—the NPS literally 'imported' irrelevant data from 6,000 miles away from intensive oyster culturing in Japan, conflating it with a deliberate misquote from a USGS researcher who had studied sedimentation in the estero. Further still, even though the California Department of Health and the USGS researcher pointed out to NPS the falsity of their claims, they presented it to the public as if the data (see [this report](#)) and subsequent reports, wherein they find that not only has the NPS [deliberately misled the public and Marin County officials concerning alleged harm from oyster operations but failed to ensure that ethical and integrity standards were met.](#)

Now, five years later, you must evaluate a disturbingly similar situation, in which the NPS has taken data from a different situation on the other side of the country (decades old jet-ski noise data from 3,000 miles away on the New Jersey shore) and knowingly used it to prepare the Environmental Impact Statement as if it were actual sound data collected at Drakes Estero, using it as the basis for NPS to fabricate yet another claim of serious environmental impact from the oyster farm. [The behavior of the NPS and their Virginia based EIS contractor VHB](#) (led by the recently retired NPS official responsible for compliance with environmental protection laws) is stunningly similar to the unacceptable manipulation of the sediment data that started this chain of deceit, contributing to Congressional demands that NAS investigate the highly questionable EIS.



The divergence between the actual sound data and the jet ski data represents a greater than 300 times overstatement of impact by NPS and its consultants. (Click on image for larger version) This graphic from an earlier article shows the footprint of sound claimed by NAS, which covers approximately 4000 acres. The Estero itself is approximately 2200 acres, while the green circle which represents the actual

recorded sound levels, covers approximately 12 acres. The sound levels of the Environ data are confirmed by data from the NPS Volpe microphone as cited in the DEIS and by the Russian River Times informal tests. It appears that neither NPS, VHB or Atkins compared their jet ski noise claims with the Volpe data they themselves cited in the DEIS.

As panel members, you would do a great public service were you to ask the NPS:

- why the noise issue never surfaced in the first NAS study (or anywhere else in the preceding five years)
- why NAS chose to hold your recent field meeting in Los Angeles, rather than in Point Reyes, where you could have visited the estero. As possible explanation, we offer this graphic from an earlier Russian River Times article, showing the enormity of the NPS' distortion of fact which would have been audibly and visibly apparent if you had visited.
- why did the NPS find there was no need for an EIS in a total rebuild of the oyster farm. In 1998, the NPS signed a negative declaration, finding that no EIS was required for a complete upgrade of the oyster operation. What subsequent scientific data justifies this complete reversal of position?

When the first case of fraudulent claims about sedimentation surfaced, we were amazed at the NPS' disregard of its own procedures to insure scientific integrity. In 2006 our reporter, then writing for the Point Reyes Light, consulted with Dr. Brian Schrag, an ethics expert at the Poynter Institute for the Study of Ethics and American Institutions. Schrag commented: *"Some have charged that under the current (Bush) administration, government scientific research has become politicized. One of the things that is worrisome, if that happens, is that normal checks and balances of scientific research can be compromised. In such circumstances, appealing to internal procedures of a particular government agency may turn out to be futile."* We find his word to be particularly true at Drakes Estero. The NPS has ignored its own procedures and standards not only scientifically, but in conducting the EIS itself, as is made clear by many of the informed comments on the draft EIS, [such as that submitted to your panel by Dr. Laura Watt.](#)

You are dealing with a threatened NPS bureaucracy that has been unable to duck responsibility for its actions

and subsequent cover-up and is squirming under a Congressional microscope. Here, we can draw a parallel with the experience of retired Navy Admiral Hal Gehman, who headed the investigation into the Columbia Shuttle disaster (as a senior admiral, he had led other major investigations, including investigation of the terrorist attack on the USS Cole). Speaking to writer William Langewiesche during the investigation, Gehman said: *“It’s been scorched into my mind that bureaucracies will do anything to defend themselves. It’s not evil—it’s a just a natural reaction of bureaucracies and since NASA is a bureaucracy, I expect the same from them. As we go through the investigation, I’ve been looking for signs where the system is trying to defend itself.”*

Initially, NASA administrator Sean O’Keefe formed his own parallel, internal investigation team, which included Linda Ham, a Shuttle program manager who—it later turned out—played a key role in events leading to the disaster. They tried to deflect investigation from the actual cause. Gehman wrested control of the program from O’Keefe. *“I’m not going to get rolled by the system...Now, when I hear NASA telling me things like ‘Gotta be true!’ or, ‘We know this to be true’ all my alarm bells go off.”* In a key move, Gehman established direct support from Congress for his independence, rewriting the stated mission to include *“root cause and circumstances”* which turned out to be NASA’s politicized misuse of science and engineering.

The NPS has already ‘rolled’ the NAS, manipulating one investigation and now, they appear to be trying to do it again. Many in our community wonder why the NAS has let itself be drawn into another NPS-controlled investigation, especially on such an unrealistic time schedule. One of the many NPS hypotheses of harm discredited in the NAS report was alleged patterns of disturbance of harbor seals by oyster workers. The NAS report concluded that the volunteer observation database was inadequate to support the NPS conclusions and was never intended to be a regulatory tool, but a way of detecting long term trends. The NPS report stated that that date-stamped photos [of worker activity and seal disturbance] would be needed to support such claims. During the entire NAS investigation, the NPS deliberately concealed the fact that they had undertaken three years of minute-by minute-photographs during the pupping season in an attempt to prove harm. It is important to note that this data [revealed zero oyster farm disturbances, and that some claimed disturbances were attributable to kayaks](#), yet NPS failed to share this exculpatory evidence.

We believe that the careful wording of the NAS ‘Statement of Task’ is designed to emasculate your review, down to the careful choice of language that avoids an evaluation of ‘data.’ We urge you to follow Admiral Gehman’s example and include *“root cause and circumstances”* and a specific evaluation of data and its appropriate use in your report if the NPS is to be held to any level of scientific integrity and follow the procedures described in its own manuals. (Apparently for legal reasons, senior NPS management vociferously opposes [characterizing the concealed photographs and other information as data](#), as shown on [p29 of the Frost report](#).)

Now, you face the same circumstances in the NPS’ use of obsolete jet-ski data imported from New Jersey as representative of the actual DBOC sound levels. The Russian River Times investigation shows that the NPS and its consultants not only failed to follow NPS policy and directly measure DBOC-generated sound levels but knew that the outdated jet-ski data were not representative of the modern DBOC four-stroke outboard motors, built to current regulatory standards. We urge that your report clearly analyze the NPS’ behavior, starting with the sedimentation issues, [following through failure to reveal the existence of the exculpatory photographs](#) and ending with the misleading ‘importation’ of the jet-ski data in the over-all preparation of the EIS.

Previously, NAS staff was far too solicitous of the National Park Service. Evidently several of the previous panel members were of the same opinion, as there were multiple leaks of drafts of their report and other documents. The draft outline report contained the directive: “Sloppy use of data, but forgive the troops.” What ‘data? Who are the ‘troops’ and for what are they being forgiven? Worse still was the editorial input that reduced the comment on the NAS harbor-seal papers from “so biased as to be meaningless” to a final version that relied on highly obtuse discussion of statistics and causality, inaccessible to the general public.

Science is being distorted to justify an NPS political decision that has already been made. Starting in 2006, we have observed multiple generations of hypothesis of harm, presented as Federally measured scientific fact. Yet, as each successive hypothesis of harm is discredited, the NPS creates a controversy over an insignificant point in an attempt to deflect the criticism and fabricates a new hypothesis that in turn—as with the use of New Jersey two-stroke jet-ski sound data—proves to be false.

Science is an intensely human endeavor, whose success rests to a large part on trust that the data has not been manipulated. Here, we show two clear examples where the NPS has been caught violating this basic bedrock of scientific ethics, first with the sediment data and now with the noise data, yet the staff, consultants and peer reviewers working for NPS and DOI failed to fulfill their responsibility under the DOI ethics and scientific integrity policy, which covers all employees and consultants and volunteers. We realize it is distasteful to have to deal with unethical behavior by ones scientific peers, but under the DOI science integrity policy manual, obligations are clear. NPS is obliged to have notified you of your responsibilities, incorporating such language into your contract. If in the course of your study you find evidence of scientific misconduct, [section 3.6 \(H\) 4](#) defines your obligations. You are responsible for, “*Reporting to the appropriate officials, as described in Section 3.8 of this chapter, knowledge of scientific misconduct that is planned, is imminent, or has occurred.*” Without your panel’s intervention, the NPS and its EIS process will continue in violating all three.

We cannot overemphasize how damaging NPS behavior has been to the local public’s perception of federal science and policy, not only regarding the oyster farm, but a host of other issues. NPS and its consultants are asking us to believe that a 300-fold error in sound footprint, as shown in the previous graphic, makes no difference to the conclusions of the EIS. This is clearly stated in a May 7, 2012 letter from peer review consultant ATKINS to Dr. Ralph Morgenweck, DOI Scientific Integrity Officer. Essentially, having been caught with their hand in the data jar, the NPS consultant abdicates responsibility by saying that the EIS is fine, no one is wrong, its too complicated and repeats that tired, over-used scientific excuse, ‘further research is required’. It never addresses the huge errors caused by the bogus NPS data nor its origin. The citizens of West Marin and the general public know when they are being lied to by NPS and its consultants. We look to your panel to protect us from this kind of scientific dishonesty and abuse of policy.

Loss of trust in science damages not only our coastal communities but the the entire Nation and is a clear and present threat to the future of our environment.

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Unsound Advice: NPS and its Drakes Estero DEIS Consultant

Posted on [May 16, 2012](#)

Last week, the Department of Interior Inspector General announced an investigation into the conduct of the National Park Service Draft Environmental Impact Statement (DEIS) for Drake’s Estero, prepared by its

contractor, VHB. A spokesman for the Inspector General said “the inquiry will examine whether park staff followed correct procedures; it will not include an examination of the integrity of the science itself. If evidence of procedural abnormality or misconduct is found, an official investigation will then be launched to determine whether or not that activity was criminal.” Here, the science itself is not what is controversial; it is the management decision to ‘import’ non-representative sound data rather than follow NPS policy and procedures.

This decision becomes key in evaluating potential fraud, as it is the apparently deliberate use of non-representative data by the NPS to support its latest claim of environmental harm caused by the oyster farm. Was it NPS or VHB who decided to ‘import’ the bogus data? What is clear is that at the same time NPS was starting work on the Drakes Estero environmental permit (or ‘review’), the NPS was being slapped down in Federal District Court in a 2010 decision involving jet-skis sound measurements in National Parks in Florida and Michigan, with the court specifically questioning NPS’ use of imported sound data. (Bluewater Network v. Salazar) The court, in their ruling, specifically noted the NPS failure to provide rational explanations to demonstrate that their conclusions were justified by the data.

The record shows that NPS and VHB knew of the impact of the rulings in the Florida/Michigan case at the time they were preparing the Drakes Estero DEIS. Jake Hoogland, former Chief of NPS’ Environmental Quality Division, before retiring in 2008 and moving through the typical Washington revolving door to VHB as their NPS Market Leader, made a presentation at the 2011 George Wright Society meeting, funded by NPS. His presentation discussed the impact of the recent court decisions on personal watercraft in the National Park System and their impact on science and regulation. Significantly, Hoogland visited DBOC on 1 September 2010 and was given a full tour of all the facilities on a day when the farm was in full operation.



DBOC Farm Manager Ginny Lunny-Cummings holding a sound meter within 3 feet of the oyster tumbler, indicating a sound level of 61 dB. Rather than measuring, the Park Service imported supposedly equivalent data showing the device put out 79 decibels at 50 feet. The Times reading agrees closely with the Environ reading of 50 decibels at 50 feet, ten times less than the NPS limit of 60 decibels at 50 feet (36 CFR 2.12) For further details on sound issues see this link: [‘Counterfeiting Science’](#)

Much of the controversy in the Drakes Estero DEIS focused not only on why NPS and VBH failed to measure the actual sound of the DBOC boats, but why they substituted data from a 75-horsepower, two-stroke jet ski tested in 1995, for the late-model 20 and 40 horsepower four-stroke outboards DBOC uses, as measured by Environ.

The disagreement is not scientific *per se*, but one of substituting erroneous data. Personal Watercraft Industry Association Executive Director, David Dickerson, stated that “there is no controversy over the methods used to test for boat sound, which are well known to state and federal regulators,” and went on to state that they are used for law enforcement and follow established sound standards.

The Association has worked extensively with NPS for over two decades involving use of jet skis, and noted the considerable experience of NPS’ Ft. Collins soundscape scientists in this area. He said that NPS was well aware of the significant advances in Jet Ski and outboard motors to meet the 2005 EPA guidelines, and noted that in

the Florida case, NPS based their arguments on the fact that these improvements have brought about sound-level reductions of over 70% from earlier two strokes. In its 2011 judgment, the court was repeatedly critical of NPS' failure to establish "a rational connection between the facts found and the choices made."

In the Drakes Estero DEIS, no reasons are given for selecting the jet ski sound, and the even more distorting substitution of construction-equipment sound data for actual oyster equipment. This fact places these questions before the IG's investigation: who at NPS or VBH is responsible for the decision not to make actual measurements of the DBOC equipment; who selected the 1995 Jet Ski and other imported data; and what was their rationale for doing so.

The imported data selected for the DEIS produces results claiming to show negative impact over the entire estero, covering all the seal haul-out areas. However, NPS has run through five generations of hypotheses of harm to establish a negative link between oyster-farm activity and seal populations but failed in every instance. NPS even conducted [a three-year, hidden-camera surveillance program](#), but when it failed to show the hoped-for harm and impairment, this lack of harm was concealed from the National Academy of Sciences, and the Marine Mammal Commission panel of experts, who found no meaningful conflict between oyster operations and wildlife.

In fact, much of the Drakes Estero DEIS would suffer from the Court's criticism of the Florida case, where the court found NPS "arbitrary and capricious" in reversing its earlier decision on personal watercraft. In the Drakes Estero DEIS, the Park Service also reversed itself. In 1998, NPS performed an Environmental Assessment on a major upgrade of the oyster farm, including an interpretive center and research facilities, and issued a Finding of No Significant Impact (FONSI) under NEPA law. The current DEIS reverses that position, and raises the question as to what has changed in the law and in the science since 1998 that would justify NPS' reversal of the earlier findings, which had been supported by the County of Marin, the Sierra Club and other environmental organizations

What the court essentially found in the Florida case is that NPS had reached a series of conclusions without adequate explanation as to how they were justified. At Drakes Estero, NPS' DEIS presented a series of unsubstantiated conclusions based on altered standards and manipulated data. In the Drakes Estero case, management decisions were made by NPS and VHB not to measure actual DBOC sound sources and then to rely on totally unrelated jet ski, construction jack-hammer and large construction equipment sound measurements instead. The NPS soundscape programs require that specific sources, such as the DBOC equipment, be identified, measured and remediation strategies considered. In this case, the DBOC boats are also specific sources, as their sound footprints and GPS recorded routes are unique in the estero.

The DEIS is silent on this substitution, implying that the data represented actual measurements from Drakes Estero. A peer review by the Atkins company was apparently requested by NPS, who then failed to include any of the negative data from the DEIS responses, including comments by other government agencies and Environ, who measured the actual sound levels from DBOC. The Atkins team, including Dr. Christopher Clark, a nationally recognized bio-acoustic expert and the team leader, Dr. Steven Courtney, were completely misled by this NPS deception, typified by the DEIS table of sound sources (Table 3-3), boldly entitled "Noise Generators at DBOC".

Hoogland's role at the Park Service, before moving to VHB as NPS Market Leader, was Chief of NPS

Environmental Quality Division. This NPS program is responsible for assisting parks and regions with NEPA compliance, including court-ordered actions, resource protection and other related tasks with staff in both Washington, DC and Ft. Collins, Colorado. Hoogland was also responsible for developing the NPS EIS Planning, Environment and Public Comment program, making him aware of the many ways in which the Drakes Bay DEIS deviated from normal programmatic standards, as noted in many of the public comments, all of which NPS withheld from the Atkins peer reviewer team.

While at NPS, Hoogland stated, in a 2000 NPS article on environmental lawsuits, that “Decisions must be based on reasonable information, well-documented and fully disclosed.” A dozen years and millions of dollars worth of taxpayer-funded studies later, what the Drakes Bay DEIS shows us is an NPS that is more than willing to sacrifice scientific integrity and policy for the politics of the moment.

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Counterfeiting Science: National Park Service vs. Sound Scientific Data

Posted on [May 8, 2012](#)

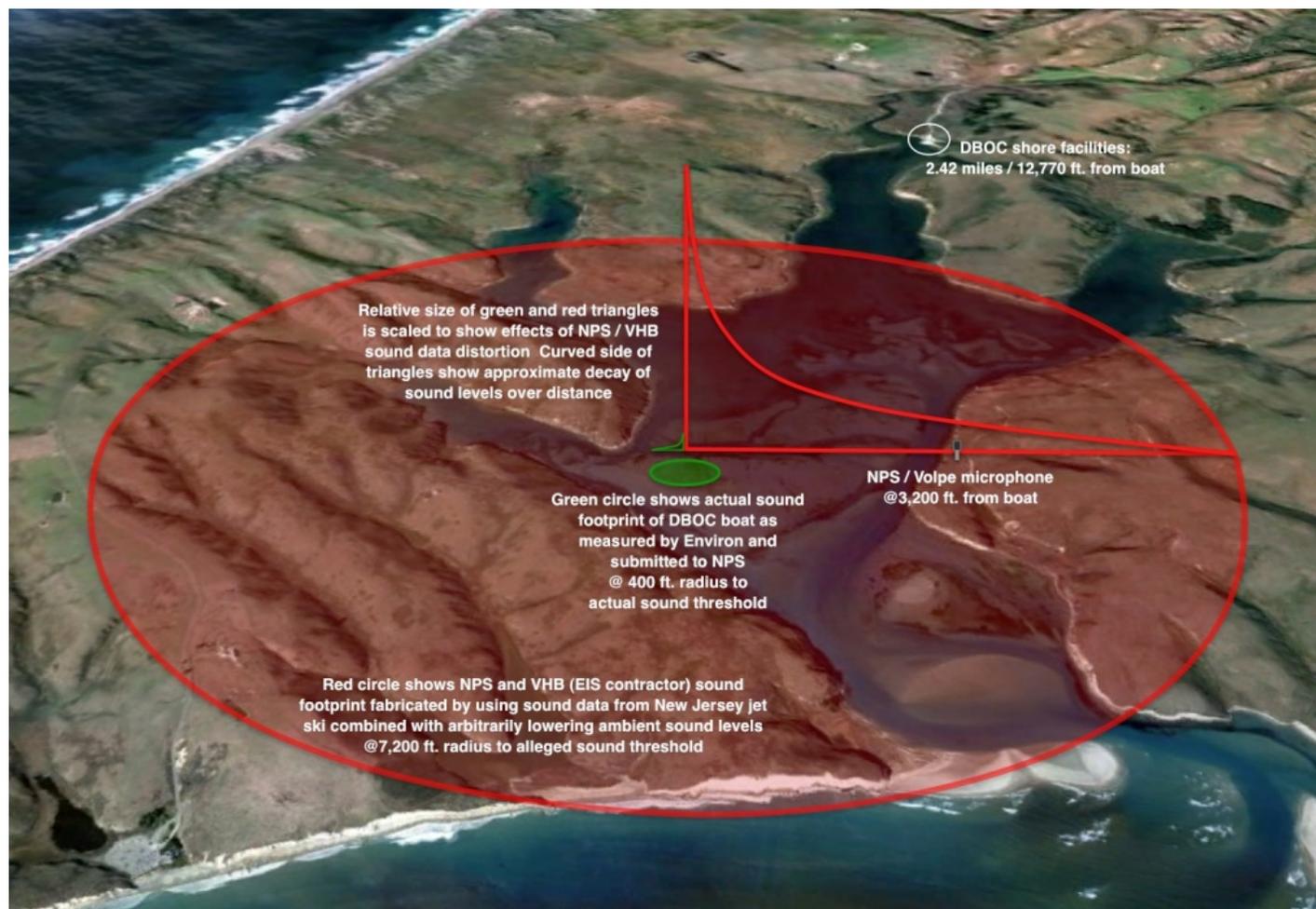
A review of the current Draft Environmental Impact Statement (DEIS) for Drake’s Estero reveals the nature of National Park Service Director Jon Jarvis’ war on the scientific method. The scientific method involves observation, hypothesis, analysis and verification. In Jarvis’ case, NPS observation is driven by his version of policy, coupled with refusal to engage in open dialogue on the analysis, and concealment and manipulation of data that would prevent them from verifying their claims.

Once again, NPS created a new hypothesis of harm, in this case the supposedly highly negative impact of sound on wildlife and wilderness from Drake’s Bay Oyster Company. However, this latest allegation cannot survive even the most cursory examination without collapsing in a way that raises serious questions as to the integrity of Jarvis’ management of Park Service science, repeating behaviors that date from the original attempts to remove the oyster farm in 2004 by unsuccessfully lobbying California Department of Fish and Game to refuse to grant a 25-year lease extension. In the meeting, CDFG stated that if NPS had reason to shut down the oyster farm it should do it under its own authority. If the CDFG lease had not been extended, Lunny could not have acquired the oyster farm in 2005.

In the current case, NPS and its contractor, VBH, claim that noise has a significant negative impact on wildlife in the estero. Their case was presented such that it misled peer reviewers at ATKINS, hired by the Department of Interior to analyze the DEIS. They believed that the data presented to them came from actual sources in the estero, as clearly stated in Chapter 3, p. 155 describing, “the existing conditions for these elements of the natural, cultural and social environment that could be affected by the implementations of those actions considered in this EIS.” The soundscapes are expressly identified, yet Table 3.3 of that chapter substitutes, for the 20-hp DBOC outboard, sound values from 75-horsepower Kawasaki Jet Skis as listed in a New Jersey State Police report. The title of Table 3.3? ”Noise Generators at DBOC.”

Abuse of science begins with NPS failure to identify and measure actual sound sources, as set forth by the NPS directives and procedures established by their own NPS soundscape scientists. Without explanation as to the reasons, they ‘imported’ the New Jersey jet-ski sound level of 71 decibels and applied it to the DBOC boat, against the boat’s actual level of 60 decibels as measured by ENVIRON (hired by DBOC to measure actual sounds to counteract the ‘jet ski’ sound level claims). Note that the decibel scale is logarithmic, so that the

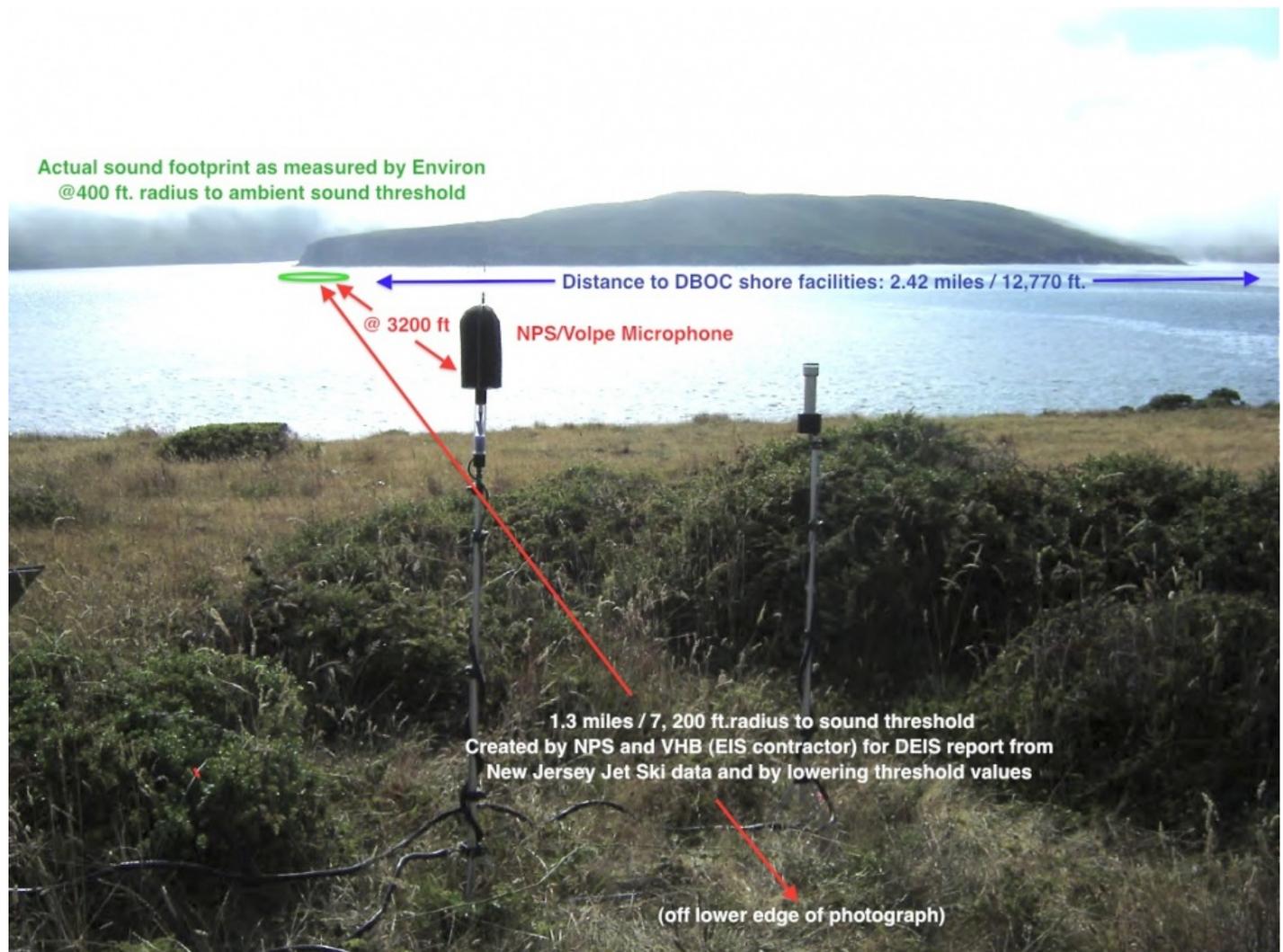
claimed level is not 18% louder (the linear value) but *twelve times as loud*. In other words, it would take twelve DBOC boats to equal the grossly exaggerated sound levels claimed by NPS for a single boat. When this level of exaggeration is coupled with arbitrarily lowering the ambient sound levels in the estero, the enormity of the way NPS distorted the sound becomes evident, as shown graphically below



Sound footprints of the DBOC oyster boats as alleged by NPS and its contractor, and as actually measured by Environ. The height of the triangles shows the relative difference between the decibel levels. The boat's location is immediately below the vertical sides of the triangle. (click on images for larger version)

NPS and VHB should have known that this 'imported' sound level would not be credible because on February 16, 2011, Natalie Gates, the PRNS scientist managing the DEIS, Nancy Barker of VHB and another VHB staffer, were taken on an Estero boat tour by Kevin Lunny of DBOC. They taped their observations and provided DBOC with a copy on which their normal voices are clearly understandable. Yet they conclude, on table 4.4 of the DEIS, that the boat sound level of 71 decibels means, "Vocal communication will be difficult at four feet" and a sound level of 52 dB, at 435 feet, "Interferes with interpretive presentations or group leader communications." The oyster boat is ten feet long, and at that distance, the motor sound level would have to be 85 decibels to match their data. Table 3.4 of the DEIS states that at 80 dB, conversation becomes difficult and that at two feet the recorded conversation could not have taken place. Despite this conflicting evidence, NPS and its contractor failed to measure actual sound levels. Worse, the NPS had research data in hand that directly discredited their hypothesis of harm.

The DEIS cites the Federal Aviation Administration Volpe Center 2011 report, entitled, “Baseline Ambient Sound Levels in Point Reyes National Seashore,” which has a full range of sound intensity and background levels taken from a microphone directly overlooking the estero (despite NPS DEIS statements that the microphone was obstructed and unable to hear mariculture activities). Though the Volpe report never mentioned oyster boats, the levels claimed by NPS should have been recorded by the FAA microphone. However, it appeared that the boat’s actual, measured sound print, as shown in the graphic, should have appeared on the data when the boat was on its weekly Department of Health sampling trips in the eastern channel at the levels reported by Environ.



Volpe report Figure 53, annotated to show distances and location of oyster boat footprint, which DEIS claims is masked by the bluffs. The actual recordings obtained by Dr. Goodman clearly show the passage of the oyster boats at sound levels consistent with the Environ data, with the boat positions determined by their on-board GPS systems.

Dr. Corey Goodman, a nationally prominent scientist and local resident, has been a long-standing critic of NPS since he was asked, in April 2007, to review their claims by local supervisor Steve Kinsey. Dr. Goodman obtained the underlying data from the Volpe report, which he reviewed in conjunction with Environ and scientists from NPS sound research at Fort Collins, Colorado. Goodman’s highly detailed Fraud, Waste and Abuse (Scientific Misconduct) complaint was submitted to the Interior Department’s Inspector General

on April 24, 2012. The Volpe sound data were confirmed by the Times' more elementary study of boat sound levels by NPS and VHB, and clearly shows that the presence of the boat in the eastern channel were recorded by the Volpe microphone, closely matching the decibel levels Environ measured. NPS concealed these data and withheld them from the DEIS.

This is yet another failure by NPS to follow a scientific procedure, as they should have at least tested their hypothesis of harm against the actual, available sound data. This pattern is identical to the incident several years ago when the Park Service set up a hidden camera in approximately the same location as the Volpe microphone. When it failed to substantiate the previous harm hypothesis—that oyster operations were disturbing seals—they concealed the program from the Marin County Board of Supervisors, DOI IG, the National Academy of Sciences and the Marine Mammal Commission panel. NPS had exculpatory evidence and direct contradictions in hand, and either failed to consider this material or simply ignored it and concealed it from others just as, in this case, they withheld the Environ sound data from peer reviewers.

Dr. Goodman's investigation revealed that the DEIS made numerous claims that are internally contradictory. For instance, NPS used three different standards for sound levels, finally selecting one that is neither cited in the Volpe report nor used in any other NPS EIS reports. The DEIS then claims that it is 'using the accepted formula' that sound decreases 6 decibels with every doubling of distance from the source. However, this NPS statement is contradicted by DEIS' table 4-2, used with the actual Environ data as the basis for the Times graphic. Dr. Goodman's Complaint notes significant errors in the NPS sound-distance calculations. This miscalculation also shows that the unbelievable NPS claim—that a hand-held air hammer is audible at 3.3 miles—becomes ludicrous when corrected, indicating that NPS believes the hammer should be audible at a distance of over 10 miles. There is no scientifically acceptable way that actual sound data could be manipulated to support the NPS hypothesis of harm.

The reality of the oyster farm is considerably different and does not need science and data to see the fantasy of the NPS claims. Approximately 50,000 people/year visit the oyster farm, take educational tours, sit at picnic tables and enjoy the oysters, all within a few feet of equipment that the DEIS claims to be so noisy that normal conversation would be impossible. Yet the Lunnys have received not a single complaint about noise from visitors or NPS, until noise surfaced as the latest hypothesis of harm in the DEIS. The current pattern is the same as all previous NPS allegations: when examined and reviewed, the false claims were discredited. Repeated attempts to manufacture a case of environmental harm against the Lunnys failed. Imported data from New Jersey jet ski and construction equipment is clearly another case in which counterfeit science was called upon to produce the desired NPS result.

May 8th is the fifth anniversary of NPS claims to the Marin County Board of Supervisors that Lunny was an environmental criminal who had caused a massive loss of seal pups. In the ensuing five years, not one of the NPS hypotheses of harm has held up to millions of dollars of taxpayer-funded investigation by outside sources such as the National Academy of Sciences or the Marine Mammal Commission. Now, NPS behavior has totally invalidated their DEIS which—as Senator Dianne Feinstein said in a recent letter to Interior Secretary Salazar—appears fraudulent. The Department of Interior IG and the White House Office of Science and Technology Policy should take this case from NPS and those involved within DOI, judge their conduct against the standards set forth in President Obama's March 9, 2009 executive order on scientific integrity, and proceed as the facts, laws and accountability dictate.

National Park Service 'Sounds' Off

Posted on [April 3, 2012](#)

The ongoing science controversy surrounding Drake's Estero raises a critical question. If the Department of Interior cannot assure scientific integrity in a case representing a tiny oyster farm in a National Park, how can they ensure integrity in the management of the Nation's resources where billions of dollars are involved in leases to the oil, gas and other extractive industries that benefit from access to public lands? Senator Feinstein's blistering March 29 letter to Department of the Interior Secretary Ken Salazar borders on accusing the National Park Service of "potentially fraudulent" deception by distorting science. The Senator notes that this latest episode is one of a large number of similar events that have stretched back to the beginnings of her involvement in the controversy, when Marin supervisors, in a May 8, 2007 meeting, unanimously asked her to intervene with the Park Service regarding the NPS science at Drakes Estero and the fate of the oyster farm

The latest incident repeats a pattern of Park Service misconduct. The pattern starts when the Park Service identifies an issue and then, without even contacting Drakes Bay Oyster Company and the Lunny's, releases it, complete with misleading and unverified claims where it is distributed nationally in an echo chamber of environmental disinformation. When, as has happened every time in the past, the allegations fall apart, NPS conjures up another supposed issue, never correcting their first false allegations and never attempting to remediate the supposed problem while trying to restrict any future studies so as to not involve the previous allegations. This pattern continues despite studies by the Department of the Interior (DOI) Inspector General, the National Academy of Sciences, the Marine Mammal Commission and the DOI solicitor's office. These studies have raised the issue of known falsehoods, concealing information and serious misrepresentation of science, dating back to the first investigation with DOI IG's findings that NPS scientist deliberately misrepresented data from another federal agency (to imply that Drakes Bay Oyster Company (DBOC) was causing environmental damage.

The pattern is clear in the latest allegations that the sound from DBOC is causing harm to harbor seals and the soundscape of Drake's Estero. According to Lunny, no one from NPS had contacted him on this issue prior to being contacted by NPS' Natalie Gates in the course of her management of the current and controversial draft environmental impact statement (DEIS). She did not indicate if NPS had made any prior attempts to measure the actual sound levels in the Estero. He did note that shortly after he took over the farm in 2005, NPS scientists had thanked him for switching to quieter 4 stroke outboards for the oyster boats, which also eliminated the pollution that the older two-stroke motors caused. Gates arranged a working day visit with Vanesse Hangen Brustlin (VHB), the DEIS contractor, to evaluate the soundscape. On Feb. 16, 2011, Lunny provided a tour of the farm and a boat trip out on the estero. However, in the draft report, VHB, despite identifying the actual equipment in use and the make and horsepower of the outboards, used 16 year old data on Jet Ski's and a federal report on construction equipment of what they claimed was similar equipment.

NPS Directors Order 47 issued in 2000, which is cited in the DEIS, requires NPS to have measured the soundscape of Drakes Estero, however no such NPS data was made available to the Lunnys. Incredibly, especially considering the apparent NPS failure to baseline the data, the EIS contractor, supposed experts in soundscapes, failed take along a digital sound meter to make an approximate determine if the existing sound levels appeared to violate standards. (National Institute of Standards and technology (NIST) approved decibel

meters are available for less than \$300, with adequately accurate units for less than \$50.) Subsequent tests by Dr. Steffel of ENVIRON, hired by the Lunnys at their expense, showed that the contractor had used sound over 25 to 825 times greater than the actual sound levels. It defies credulity that the VHB 'expert', who had actually visited DBOC and seen and heard the boats and equipment, could make this kind of error. Instead, they and NPS used incorrect data from 3000 miles away and a federal highway construction document.

The pattern exactly fits the pattern of the similar incident in 2007 wherein NPS issued a report claiming among other things, that the oyster company was the major source of sediment in Drakes Estero, deliberately misquoting the findings of a USGS scientist, and implying that the negative data that came from Japan, 50 years and 5000 miles away, actually came from Drakes Estero. This was recorded in the DOI Inspector General's Oct. 2008 Semi Annual Report to Congress, which on p31 highlighted its section on NPS with the headline, "NPS Scientist misrepresents research."

In Sept. 2008, on the eve of the first National Academy of Science panel meeting, whose review of NPS science was requested by Sen. Feinstein, NPS Western Regional Director Jon Jarvis changed the agenda, removing himself as the introductory presenter, and substituted NPS scientist Ben Becker, who presented an entirely new paper, claiming disturbance of harbor seals by oyster operations. This new science was introduced despite written correspondence between then Park Chief Mary Bomar and Senator Feinstein that the NAS review would cover only existing NPS science. The Becker paper appeared designed to deflect attention from Park Superintendent Neubacher's false claim of massive loss of seal pups at the 2007 Marin County Board of Supervisors meetings, but became controversial as major errors were revealed, including a 100% overstatement of the level of oyster harvest, which the paper correlated with seal disturbance. In a leaked draft copy of the NAS report, they characterized the paper as "so biased as to be meaningless".

When the NAS report did not support NPS science and found that impacts from the oyster operations did not compromise the ecology of the estero, two environmental groups, supported by NPS, requested that the Marine Mammal Commission investigate. On the eve of the Feb. 2010 investigation, still another new NPS paper emerged, which claimed impacts on the seal population in the entire area. After lengthy review, the MMC found that the (NPS) paper failed to establish any causality, (the report said that, even at that level, the NPS data was "scant, and being stretched to its limit"). The expert panel, in their individual statements in Appendix F, was in almost complete agreement with the findings of the NAS report, finding no incompatibility between the harbor seals and oyster operations.

Coming back to the soundscape and the Environmental Impact Statement, Congress House/Senate Interior Appropriations Conference Committee, a bipartisan group, included the following language in their Dec16, 2011 Conference Report: *"The conferees are aware that the [National Park] Service will shortly be issuing a Draft Environmental Impact Statement (DEIS) regarding a possible 10-year extension for oyster operations at Point Reyes National Seashore. Because of concerns relating to the validity of the science underlying the DEIS, the conferees direct the National Academy of Sciences to assess the data, analysis, and conclusions in the DEIS in order to ensure there is a solid scientific foundation for the Final Environmental Impact Statement expected in mid-2012."* Notwithstanding, in a move that mirrors NPS head Jon Jarvis (then Western Region head) disobedience in unilaterally changing the scope of Feinstein's initial NAS request for study, NPS commissioned Atkins PLC for a 'preemptive' peer review.

The Atkins peer reviewers, including sound expert Dr. Christopher Clarkson, were clearly misled by NPS into

believing that the sound data represented Drake's Estero boats and equipment. In communications with Dr. Corey Goodman, who had provided him with the actual ENVIRON data, Clarkson said in a Mar 21 phone call to Goodman that he was deceived and in a later e-mail, stated *"I do not believe that these activities have a biologically significant impact on wildlife..."* NPS apparently also deceived DOI's scientific integrity officer, Dr. Ralph Morgenweck who in a DOI press release said, *"The peer review accomplished exactly what we were seeking, that is specific recommendations on how to improve the final impact statement to make it a better science project."*

The purpose of peer review is to improve the quality of research papers, not to prevent lying. Peer review assumes honesty on the part of the researcher. It is not a forensic analysis of the sources of the data, (badly needed in the case of NPS) but a check on the validity of the arguments based on the data. What little fraud is found is usually discovered when other scientists try to use the work or replicate results. It is true that in science, there have been a few isolated rotten apples, but in the case of DOI's handling of NPS supposed science, it is the rotten barrel that is spoiling the apples.

Posted in [Oyster Farm](#), [Uncategorized](#) | [1 Comment](#)

National Enviro Group Smears Local Oyster Farm

Posted on [November 28, 2011](#)

From the Russian River Times November- December 2011 Issue

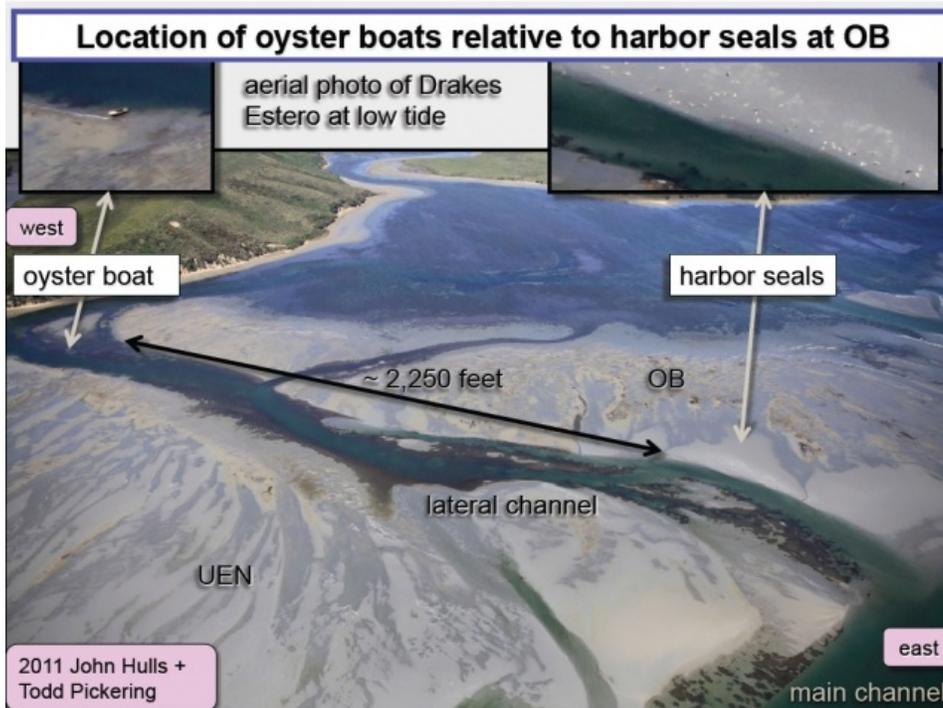
The National Parks Conservation Association's (NPCA) campaign against the presence of historic Drakes Bay Oyster Company farm (DBOC) in Point Reyes National Seashore has a readily apparent pattern of inflammatory press releases and petitions timed to influence public input. The allegations in these press releases and petitions from NPCA and its coalition show a reckless disregard for the truth, using incendiary language such as, "threats to endangered species", "repeal of the Wilderness Act", "causing the deaths of harbor seals", "wiping out endangered eel grass" and a host of other words and misinformation designed to shock the public into responding to public comment periods for National Park Service actions and to their legislators. These releases are distributed to a wide range of national and local environmental groups who re-release them, creating an echo-chamber of misinformation. None of their charges are true.



Image from Goodman report to Marine Mammal Commission showing oyster cultivation areas looking East. The small channel from left to right in the middle of the picture represents the western edge of the Seal Protection Zone in the operating protocols. See map in RR Times article, "The Gang that Couldn't Map Straight". The boat that NPCA claimed is in violation is immediately above "Bag Culture" label. (Click for larger image)

The latest case is the public comment period for the National Park Service (NPS) Environmental Impact Statement of DBOC, made in conjunction with the extension of the oyster farm's lease. The NPCA recently issued press releases claiming that they submitted photographic evidence to the California Coastal Commission (CCC) September 7-9 meeting in Crescent City, in Northern California, demonstrating that Drake's Bay Oyster Company violated the seal protection protocols by operating boats in prohibited areas. Having manufactured the complaint, they then turned around and cited the CCC's Sept 21 letter of inquiry to DBOC requesting a meeting, as 'proof' that the company was being 'reprimanded' for violations of the seal protection zone in Drake's Estero. The image in question shows the boat well outside the prohibited zone. By either design or coincidence, the draft EIS was released to the public two days later.

Tom Moore, recently retired from California Department of Fish and Game (CDFG), supervised the State shellfish leases from 1988 until his recent retirement, and was responsible for the negotiation of the 1992 joint agency protocol agreement between CDFG, NOAA Marine Fisheries and National Park Service and the California Department of Public Health. Upon his review of the photograph in question, Moore stated that *"there is absolutely no way that anyone who had any familiarity with the protocols could claim that the photos show that DBOC is in violation. None of the signatories to the agreement have ever cited DBOC for any violation of seal protection protocols."*



Second image from Goodman/MMC presentation, taken at the same time as the first photograph, showing boat at extreme western end of lateral channel, as permitted in Joint Agency protocols. The western (left) edge of the seal protection zone runs down the small channel that runs from the lateral channel towards the upper edge of the image. NPCA stated that the only photos submitted to the CCC were the previous image, with and without labels, and some of the controversial NPS hidden camera photos, which show the oyster boats hundreds of feet to the left of the channel marking the edge of the Seal Protection Zone (Click for larger image)

Neal Desai, the NPCA official who made the claims, not only attended the National Academy of Science hearings on the oyster farm's impact in Drake's Estero, including a presentation by CDFG's Tom Moore, where there was detailed discussion of the seal haul-out areas. Desai also represented the NPCA in the recent Marine Mammal Commission investigation and was one of two petitioners for the investigation. He was also present on official tours of the Estero to the same spot where he alleged that the violations occurred. In addition, Desai attended meetings at which MMC was informed that DBOC, because of what they felt were false claims against them, were logging all boat trips by global positioning system, yet NPCA apparently felt no obligation to check with DBOC before making these claims. DBOC never received any letter or citation of protocol violations by either CDFG or NPS since taking over operation of the oyster farm from 2005 to present.

Ironically, the photo in question is part of a series of aerial images taken as research to accurately determine positions in the Estero for a May 2011 Russian River Times article on the conflicting seal haul-out maps presented by NPS, entitled "The Gang that Couldn't Map Straight". In the CCC letter to DBOC, the photo is credited to the author of this article, Times Contributing Editor John Hulls and his associate, Todd Pickering. The only authorized and published use of the images was by local scientist Dr. Corey Goodman, who used two of the photographs in an August 29, 2011 presentation to the Marine Mammal Commission, labeling key areas and distances from oyster areas to seal haul out sites. MMC released the report to NPCA and others on August 30th. The NPCA's use of the doctored photo came to the Times attention when the photograph appeared on the National Parks Traveler (NPT) website on October 5th with Dr. Goodman's label removed. National Parks Traveler confirmed that NPCA's Desai was the source of the photograph, and presented it with the claim that CCC was 'reprimanding' Lunny for causing harm to harbor seals. Upon being shown the actual photos and discussing the alleged violations, NPT took down the photograph on October 6. However, the NPCA press

release triggered numerous on-line articles with headlines citing their false claims.



Image from NPT website, 5 Oct 2011 looking eastwards from end of lateral channel. (Original in color). NPT confirmed that Desai was the source of the image. Note that labels from authorized use by Goodman have been removed. NPT reduced the size of the image he provided to fit their format. The small channel marking the western end of the seal protection zone is clearly visible in the upper left portion of the image.

The previous incident of highly charged NPCA false claims took place during the public hearings to determine the scope of the NPS EIS. On November 4, 2010, NPCA distributed an e-mail stating that there were endangered plants and animals within the Estero including harbor seals, birds including Black Brants and Great Egrets, along with eel grass that were being threatened by DBOC. According to the Fish and Wildlife service, none of these species are in any way threatened or endangered. Significantly, NPS statistics make it possible to see the impact of this widely distributed press release. Sarah Rolph, a writer, tabulated the results. According to her review, the 3,894 responses received during the 15 October-10 November 2010 comment period, between 2,952 or 75 percent came in during the week following the NPCA flyer with 1,497 on the exact day as the release. The statistics show that misleading actions such as Desai's using emotional trigger words like 'threatened' or 'endangered' bring about surges of well-intentioned one-click environmentalism. Rolph reports that many of the negative responses were simply cut and paste from the NPCA release. In cases such as small communities like West Marin, local input must compete with a tide of national misinformation. Informal local surveys by the Marin Independent Journal newspaper and local groups, where there has been in-depth coverage of the issue, put support for the oyster farm's continued existence at around 90 percent.

In an earlier 2009 incident, NPCA participated in an equally blatant signature gathering campaign to convince Congresswoman Lynn Woolsey not to support the Feinstein legislation authorizing Interior Secretary Salazar to extend DBOC's lease for ten years. The group, SaveDrakesBay.org (SDB) had a table set up at the Sebastopol 'Whole Foods' store, manned by a person named 'Brian', who was telling the passing shoppers

outrageous fabrications such as that seals were dying because of the oyster factory operation and there was also a conspiracy to destroy the Wilderness Act. He displayed maps claiming to show that the eel grass, an important part of the ecosystem ‘was nearly gone’ and that it was ‘dying because of the oysters’. Once again, these claims fly in the face of evidence. According to NOAA officials, the seal population is healthy, and according to the NAS, the eelgrass doubled in the Estero in the last 20 years, increasing from 361 acres in 1991 to 740 acres in 2007. There was no explanation as to how extending the lease for an allowed pre-existing non-conforming activities (regularly allowed in wilderness areas) would open the door to commercial exploitation of areas protected by the Wilderness Act. This episode was extensively covered in the July 2009 issue of the Times in an article entitled “Environmental Petition Spreads Discredited Information”

Records show that NPCA officials launched the SDB website in April of 07, registering the domain name and listing the Administration Contact as ndesai@npca.org. The site claims to involve a coalition of local and national environmental groups. Many of the NPCA press releases appear to be distributed through the group, and the organization has recently launched a second website. It is possible to trace the NPCA claims of the protocol violations through SDB to many other sites and environmental groups. For instance, the California water news website Aquaforntia.com leads a recent post with the headline, “Coastal Commission reprimands Drakes Bay Oyster Company; Motorized boats, plastic pollution “pose serious threats to marine habitats and wildlife”. and makes several other demonstrably false claims that appear to have their origin in NPCA’s inflammatory claims. Aquaforntia cites one of NPCA’s partners in the SDB organization as the basis of their article.

In 22 November meeting with NPCA’s Western Region Director, Ron Sundergill, he claimed that while NPCA was a member of the SDB coalition, NPCA was not responsible for the site or the actions of its members. Regarding the photograph and the violations of the protocol, he stated that Desai checked with both the Marine Mammal Commission and the California Coastal Commission concerning violations of the protocols shown in the photograph. He showed the Times two photographs from the controversial NPS ‘hidden camera’ program which show the boat in approximately the same location as the original photo. He claimed they supported NPCA’s contentions and also showed a marked up version of the original photograph in question that showed Desai’s interpretation of the protocols.



One of the NPS ‘Hidden Camera’ photograph submitted to CCC by NPCA, claiming violations of seal protection zone. Despite the low angle and foreshortening of the photograph, the mouth of the north-south channel delineating the edge of the zone is clearly visible to the right of the image, and the oyster boats and workers are tending the bags as shown in the previous image from the Goodman report to the MMC, well to the west of the

protection zone. (Click for larger image)

Desai's markup directly contradicts the protocols, especially a 2 June 92 letter from NPS to CDFG agreeing to allow use of the western channel to tend the oyster harvest areas. He also stated that he has relied on Desai to handle the DBOC campaign for the past five years. He also stated that while he had not reviewed the protocols, he *"had not seen any misrepresented facts"* in NPCA's presentations. Sundergill responded to Times claims that the original photo had been altered from its only published form by removing the labels by stating they were *"removed in the process of copying"* and that both versions had been submitted to the CCC. However, he confirmed that Desai sent NPT only the image with the labels removed, but claimed that this did not count as 'cropping' the original photograph. He did not know who else had received the doctored image, and declined to have NPCA issue a retraction stating that the original photograph did not show a violation of the harbor seal protection zones.

In a matter unrelated to the photographs, NPCA also claims that CCC imposed a fine on the oyster company \$61,250 in December 2009 which is highly misleading as CCC attempted to impose a fine for which it had no legislative authority. The CCC was notified of this on 19 January 2010. The legislation establishing the Coastal Commission defines its relationship to other agencies and Section 30411(a) clearly states "The Department of Fish and Game and the Fish and Game Commission are the principal state agencies responsible for the establishment and control of wildlife and fishery management programs and the commission shall not establish or impose any controls with respect thereto that duplicate or exceed the regulatory controls established by these agencies pursuant to specific statutory requirements or authorizations. The imposition of the fine was challenged under this section, and no attempts at collection have been made.

In addition, CDFG had previously notified CCC that the confusion over the lease areas resulted from a clerical error by CDFG which was already in the process of being corrected. Tom Moore of CDFG said *"I brought this mistake to the attention of the National Academy of Science in my presentation on mariculture in Drakes Estero hearings in Mill Valley on September 4, 2008. This whole idea of 'rogue oyster growers' is just ridiculous. Their leases give them a specified time to fix any issues we observe, up to 90 days, and we rarely if ever fine anybody. Lunny has done everything he was supposed to since purchasing the oyster farm"* The Fish and Game Commission corrected the lease on 9 December 2009, which has the force of law.

The Drake's Bay situation points out the need for national organizations like NPCA to be responsible for their actions at the local level, or the integrity of the environmental movement will continue to be divided and compromised, as has been noted by several researchers and pollsters. More importantly, it shows how the NPS, without a proper watchdog or national policy for agriculture and mariculture within the parks, places rural communities and their citizens at the whim of the local Park Superintendent. Over a third of the 400-some national parks, monuments and seashores contain culturally significant working landscapes. In the case of Drake's Estero, the Superintendent flip-flopped from planning a multi-million dollar upgrade of the oyster farm facilities, signing off that it didn't require any action under state and federal environmental laws, to conducting a highly questionable campaign to get rid of DBOC. His actions resulted in millions of taxpayer dollars spent on reports, studies, staff time and environmental impact statements, and has yet to produce any data showing that the oyster farm is detrimental to the Estero.

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Busting the Park Service Coverup

Posted on [November 27, 2011](#)

From the Russian River Times November 2011

In an all too rare case of bipartisan agreement, letters to Department of Interior Secretary Salazar from Senator Feinstein and House Committee Chairman Darrell Issa both state very similar concerns about the integrity of National Park Service science. The latest turn in the Point Reyes oyster farm debates brings it under the review of the House Committee on Oversight and Government Reform, headed by Congressman Issa. (R-Ca)

In his 20 October 2011 letter to Salazar, Issa states, ” *...In light of the damaging draft Environmental Impact Statement (EIS) released by NPS on Sept 23, 2011, it is imperative that a thorough, objective review of whether NPS’s conclusions are based on flawed science occur immediately...* “. He goes on to address the Frost report on concealment of data concerning Kevin Lunny and Drakes Bay Oyster Farm and notices the interviews of seven Department of Interior and NPS officials, including Frost from the DOI Solicitors Office, NPS Director Jarvis and Point Reyes Superintendent Muldoon.



NPS "Hidden Camera" photograph of kayak approaching seals at the edge of the channel. This boat was identified as an oyster farm boat in data presented to National Academy of Sciences panel. Note date/time stamps.

While the Oversight Committee has identified the cover-up of the hidden camera photos, and the concealment of information that exonerated DBOC from claims of seal disturbance, the cover-up dates from Lunny’s 2006-2007 meetings with West Marin Supervisor Steve Kinsey when he asked for help as he was having trouble getting Neubacher to sign off on necessary permits for work required by the California Coastal Commission (2008 Inspector General’s report, P34) At an April 2007 meeting Kinsey reported that Neubacher stated that he was not going to deal with DBOC and the permit issue any more because of civil and criminal violations of environmental law, and turned down a suggestion to convene a scientific panel to evaluate DBOC’s impact on the Estero.



Kayak flushes seals into water two minutes later.

NPS never filed any charges, notified DBOC of any violations or produced any data indicating any violation of criminal or civil environmental law that would substantiate Neubacher's charges. The cover-up then continued with the Marin County Board of Supervisors meeting on May 8, 2007, which Kinsey asked Neubacher to attend. At that meeting, (webcast), Neubacher and NPS scientists made incendiary claims that have since proved to be false, concerning massive loss of seal pups and a national environmental crisis. None of Neubacher's charges has been substantiated by any NPS data or documents.

However, a few days prior to the meeting, Neubacher and his staff initiated the hidden camera program, which they would keep concealed for nearly 4 years. Deliberately withholding the existence of this program from the Inspector General and the National Academy of Science investigators is a significant focus of the Committee's hearings on scientific misconduct. The Marin Supervisor's meeting, despite the NPS accusations and objections, lead to a unanimous vote to ask Senator Feinstein to intervene which, in turn, lead to a 21 July 2007 meeting at Olema with Feinstein, NPS chief Mary Bomar, Western Regional Director Jarvis, Superintendent Neubacher and other NPS officials, along with Supervisor Kinsey, Kevin Lunny, Tom Moore of California Fish and Game, and Dr. Corey Goodman, a scientist of national reputation whom Supervisor Kinsey had asked to review Neubacher's scientific claims and report to the Board of Supervisors.

At this point, the scope of the NPS cover-up expands rapidly. As a result of the Olema meeting, Feinstein and Bomar reached an agreement that Goodman and Jarvis and Moore would work with the National Academy of Sciences to prepare a statement of work to evaluate the validity and ethics of the existing NPS science, as embodied in the Parks 'Sheltered Wilderness' report, and Goodman's report to the Marin Board of Supervisors. The NPS document had been removed from their Point Reyes website at Feinstein's request, because of errors.

At the very moment that Bomar and Feinstein were negotiating the review of the existing science, with Neubacher and Jarvis present, the hidden camera program was well underway. NPS scientists were about to start work on new studies in an apparent attempt to find negative information about DBOC to obscure the fact that Neubacher, at the time he made his allegations of criminal and civil violations by Lunny and the claims of

massive loss of seal pups and a national environmental crisis, had absolutely no data to support them or to scientifically justify closure of the oyster farm.

Despite Bomar's belief that Jarvis was proceeding as directed, he was in fact negotiating directly with the National Academy to do a study, not of the validity and ethics of the existing NPS science, but of alleged harm caused by DBOC. At the same time, Jarvis was delaying delivery of information to Goodman and essentially cutting Goodman and Moore out of the National Academy scoping process despite the fact that Goodman was an elected member of the NAS. Bomar's understanding is clearly documented in a Nov 13 letter from NPS Director Bomar to Kevin Lunny in which she states, *"...I assure you that I am committed to the National Park Service following through as was agreed to in Olema. As my letter to Senator Feinstein indicates, we are not seeking new scientific review, but rather, an independent review of what has already been done....I am copying Regional Director Jarvis as I have assigned him responsibility for managing this issue...."*

The trajectory of the cover-up leads finally to the Frost report, but there is another important point in the process demonstrating the lack of NPS integrity concerning the entire planning process. As part of the process, NPS policy requires that socio-economic impacts be studied as an integral part of park planning, which it did in 2008. In a contemporaneous interview, Dr. George Goldman, a Berkeley professor and expert in planning pointed out that they had misused the software, failed to study alternates and badly misrepresented the scope of agriculture in the park. He stated that the report "bears little resemblance to actual socioeconomic impacts and seemed designed to make Park policies look good." (See "Statistics, Damnable Statistics and Lies" Pt. Reyes Light/Nov 2008) The report only devotes three pages to agriculture. The oyster farm? Notwithstanding that it is the largest local employer next to the Park Service itself, a major factor in California mariculture and the State's last oyster cannery, it is simply not mentioned in the report. The inescapable conclusion is that Neubacher had already decided to get rid of it.

If the agreement with Bomar and Feinstein had been honored, the issue of NPS scientific integrity in Point Reyes would have been resolved years ago. Instead, Jarvis has, until now, managed to avoid any truly independent investigation of scientific integrity, especially one that might have prevented his rise to Director of the National Park Service.

In the interim, millions of dollars of taxpayer money has been and continues to be spent on investigations from which Jarvis and the NPS conspired to conceal exculpatory information and now on the hopelessly flawed and biased Environmental Impact Statement which triggered Chairman Issa's letter to Secretary Salazar

Scientific integrity is not just a bipartisan issue, but an ethical one that is as vital to the nation as it is to our coastal communities and the sustainability of their futures.

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Investigating the National Park Service

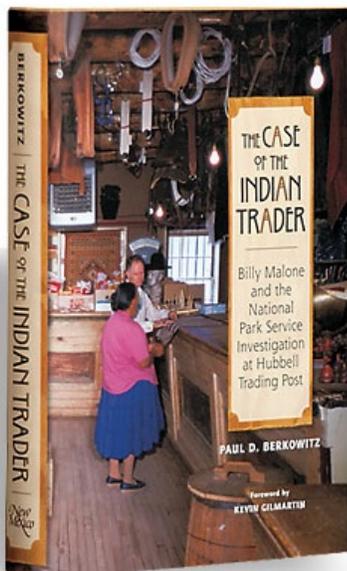
Posted on [November 17, 2011](#)

From the Russian River Times, October 2011

Are the National Park Service really the 'good guys' in the dispute over the future of oyster harvest in Point Reyes National Sea Shore? To understand the situation, consider the nature and history of NPS investigations

in general, rather than the NPS results and statistics, which—as one high ranking Department of Interior official noted—are “not worth the paper they are sent in on.”

Thanks to the University of New Mexico Press and the National Parks Traveler, one can see the stunning parallels between events surrounding an investigation of the National Park Service Hubble Trading Post and Drake’s Bay Oyster Company, operating within Point Reyes National Seashore.



The Traveler reviewed “The Case of the Indian Trader,” written by Park Service investigator Paul D. Berkowitz. Rather than reporting NPS corruption and perversion of law to his superiors, many of whom were directly involved, he took his findings directly to the Inspector General. The review describes the book as telling three stories: “one that details what seems to be a grave injustice done to a man, Billy Malone, many describe as the last and one of the best of the country’s true-to-life Indian traders; a second on mismanagement within one of the National Park Service’s largest co-operating associations; and a third that reveals an incredibly dark side of the National Park Service. Read the Park Traveler review at: <http://www.nationalparkstraveler.com/review/2011/case-indian-trader-billy-malone-and-national-park-service-investigation-hubbell-trading-post8015>

The National Park Service acquired the Hubble Trading Post with the understanding that a recognized Indian trader, integrated with the Navajo community, would operate it in the traditional manner. This exactly parallels the situation in Drake’s Estero, where the park (the Point Reyes National Seashore) was formed with the understanding that within the historic pastoral landscape, ranching and the oyster farm could continue to play their roles within the community. The authors of the Point Reyes National Seashore legislation, including environmental icon Congressman Pete McCloskey, who talked the Nixon Administration into funding for the seashore as well as authoring the Endangered Species Act, recently reaffirmed this fact.

The parallels continue with Berkowitz’ documentation of NPS behavior, including Park Service agents making false statements to obtain search warrants of Malone’s Store, unlawfully seizing the majority of his personal property and wrongfully claiming that Malone had stolen federal funds. He also describes the improper collusion between NPS officials and Western National Parks Association, when newly appointed WNPA Executive Director LeeAnn Simpson became convinced that Malone had stolen millions of dollars and insisted

that the NPS investigate.

Once again, the history closely parallels that of Drake's Estero. Gordon Bennett of the Sierra Club launched an attack on Kevin Lunny, whose family had recently acquired the oyster farm from the failing Johnson Oyster company. In a May/June 2006 article in the Sierra Club Yodeler, he claims that Lunny was disturbing harbor seals, poisoning the estuary, importing invasive species, violating his permits and failing to meet the terms of a California Coastal Commission consent decree with his predecessor, the Johnson Oyster Company. None of these charges have been shown to have merit.

Because of newly surfacing NPS intransigence, Lunny could not obtain the necessary approvals from NPS to comply with the consent decree and finally asked Marin County supervisor Steve Kinsey to intercede. Kinsey told the OIG, in its subsequent investigation, that Don Neubacher, then Superintendent of the Point Reyes National Seashore, stated he would not negotiate further with Lunny, because of his civil and criminal liabilities and that he was bringing charges. Lunny asked the NPS to document those charges, but no response was forthcoming.

Just as in the Indian Trader case, the NPS, acting in concert with Sierra Club, through their then-spokesman Gordon Bennett, made unsubstantiated claims of misconduct, apparently to remove someone who did not agree with their (NPS and Bennett/Sierra Club) new policy position. The policy to demand removal of the oyster farm represents a complete reversal of the NPS and environmental group's positions from 1998. At that time, the NPS and the Johnson Oyster Company jointly prepared a plan for completely rebuilding and expanding the entire shore facility, including preparation of drawings, surveys and a finding of negative environmental impact (No need for Environmental Impact Statement) under Federal and State regulations, signed by Park Superintendent Neubacher.

Neither the NPS, or the agencies and environmental groups such as the Sierra Club, the West Marin Environmental Action Committee who all signed off on the plan, have ever explained this about-face, or what changed in the law or science to justify it. Because of financial difficulties in the Johnson family, the plan did not move forward, and the Lunny family acquired the oyster operation in 2005.

The significance of this reversal becomes apparent in the light of following events. As a result of NPS obstructionism on permits and Neubacher's claims of criminality, Kinsey asked Senator Diane Feinstein to intercede. The Senator responded that she would investigate only if the members of the Marin County Board of Supervisors were in unanimous agreement, which they were.

This led to a public meeting where Neubacher and his scientists made misleading presentations, clearly designed to convince the public that the oyster farm was causing severe loss of seal pups and damage to the environment in Drake's Estero. The meeting in the Marin Supervisors Chambers was fully recorded on video, and the manner in which the Park service attempted to portray the oyster operations is unambiguous, despite subsequent attempts by NPS and environmental groups to distance themselves from the misleading NPS presentation (see videotaped archives at <http://www.co.marin.ca.us/depts/BS/Archive/Meetings.cfm>)

In addition to the videotaping of the Park Service attempts to mislead the public, the 8 May 2007 Marin County Board of Supervisors meeting is significant, leading to a meeting in Olema between Feinstein, Mary Bomar, then Head of the Park Service, other NPS and local officials and Kevin Lunny. More importantly, it

establishes the approximate date at which NPS began to create new, supposedly scientific underpinnings for their attempts to get rid of the oyster farm.

Bomar and Feinstein agreed that local scientist and NAS member Corey Goodman and Tom Moore, of California Fish and Game, would work with Western Regional Park Service Director Jon Jarvis to design a program under which the National Academy of Sciences would specifically investigate the integrity of the NPS science, presented in a report on the NPS website that contained false information, revealed when contradictory research reports were leaked to local scientists and journalists. Just as Berkowitz documented in the Indian Trader case, NPS' superintendents overlooked NPS policy and directives. Jarvis ignored Bomar and Feinstein's orders and negotiated directly with the National Academy to divert the investigation away from the integrity of NPS science and towards an investigation of Lunny, evidently in the hope of finding potential evidence that might substantiate Neubacher's charges.

A clear pattern in NPS behavior emerges. When Berkowitz was assigned to take over the Hubble case, he conveyed to Assistant U.S. Attorney Rob Long that he was told by his NPS Washington superiors, "I want this guy arrested," and "I don't care what we charge him with." In the case of Point Reyes, NPS senior officials evidently directed their staff to produce results to back their claims against Lunny and support their policy position. This started immediately after the 2007 Board of Supervisors meeting, when they placed hidden game cameras to observe the oyster operations and take date and time stamped evidence, and prepare statistical studies of existing data to show harm to seals from the oyster operation, generally referred to as the Becker papers

NPS failed to notify the DOI IG of these programs during his investigation, failed to inform the Marin Mammal Commission scientists, and failed to notify the NAS scientists of the existence of the photos, even when the NAS report clearly stated that resolution of disturbances by oyster workers could only be resolved "by a data collection system that could be independently verified, such as time and date stamped photographs. This verification is especially important in circumstances where there is an indication of a source of disturbance that could lead to a regulatory action, as was the case with disturbances attributed to DBOC." (NAS report Shellfish Mariculture in Drake's Estero p47). The films showed no disturbances by oyster workers. In fact, NPS scientists apparently never even bothered to check them against disturbances their volunteer survey program claimed to have seen.

It would take an entire book to document the similarities between the NPS Indian Trader investigation and the campaign against the Lunnys. So many of the things that Berkowitz documents also show up in the Drake's Bay matter. The NPS never bothered to interview Malone as to the charges against him. The NPS never bothered to ask Lunny for the data on oyster harvest and boat operations, and as a result made serious errors in their analyses. The Hubble investigation was instigated by individuals outside the NPS in the Western National Parks association, who then participated in the investigation. The current Marine Mammal Commission investigation was triggered by two individuals, Gordon Bennett of the Sierra Club and Neil Desai of National Parks Conservation, with the support of the NPS.

Incredibly enough, it appears that the MMC has received no documentation from Desai and Bennett beyond two sentences in the original letter of complaint against Lunny alleging error by the National Academy of Sciences. As in the case of the Indian Trader, where WNPA received insider information and participated in the investigation, NPS has consistently given information to friendly local factions such as Bennett of the

Sierra Club and his supporters before releasing it to the public.

In the most blatant recent case, Amy Trainer of the West Marin Environmental Action Committee released the latest version of the NPS/Becker paper alleging seal harm to the local press before the Marine Mammal Commission had even received it! It appears that the NPS even withheld this paper from the DOI solicitor investigating scientific misconduct. This repeats the pattern with the 2006 Sheltered Wilderness report, handed out to the public by Gordon Bennett of the Sierra Club, documented in the IG report.

In addition, with every critique of the Park Service, their supporters in the local environmental movement launch highly inaccurate broadsides, run misleading public surveys gathering signatures based on fabricated claims that the oyster 'factory' is killing seals, has wiped out the eelgrass and imported non-native species. They then send their calls-to-action to some 50 plus national environmental groups, most of whom take the claims at face value, thus totally distorting the public debate. A recent survey by the Marin Independent Journal, which serves all of Marin, showed that the local populous, who are considerably more aware of the tactics of Bennett and EAC's Amy Trainer, voted 90% in favor of the oyster farm continuing to operate, whereas the majority of national public comments appeared to stem from 'click-the-button' e-mail responses to the false claims against the oyster company.

However, what is most striking in both the case of the Hubble Trading Post and the Drake's Bay Oyster Company is the stunning unresponsiveness of the NPS to outside authority, be it Department of the Interior, or even Congress. Berkowitz, discussing ethics and values in the NPS, quotes DOI Inspector General Devaney in his 2003 testimony to congress on failure to implement mandated reforms: *"Mr. Chairman and members of the committee, I have served in Federal Government for a little over 32 years. I have never seen an organization more unwilling to accept constructive criticism or embrace new ideas than the National Park Service. Their culture is to fight fiercely to protect the status quo and reject any idea that is not their own."* There is no more perfect example of this than the just-released NPS Environmental Impact Statement on Drakes Estero. (Remember that just a few years ago, the same Park Superintendent signed a negative declaration on rebuilding the Johnson oyster, i.e. no EIS necessary.) The Park Service has never accepted the critique of its first document, the 2006 Sheltered Wilderness report withdrawn when Senator Feinstein stated that the scientific errors must be corrected.

Now, five years and several million public dollars later, we have findings by the Inspector General that NPS scientists deliberately misled the public, NAS findings that the NPS had failed to demonstrate their claims of harm from oyster operations and had exaggerated and misrepresented their science, DOI solicitors' findings that NPS officials and scientists violated NPS' Code on scientific and scholarly conduct, and an upcoming report from the Marine Mammal Commission.

So, what's in the new Environmental Impact Statement? With the boldfaced lie about oysters being the main source of sediment being removed, the NPS simply says "We're right and everyone else is wrong," and thumbs its nose at Congress, the DOI Inspector General and the National Academy of Sciences and all scientific criticism. The EIS, prepared by the same NPS staff members, merely restates the false claims of the long-discredited Sheltered Wilderness report, which they themselves fabricated.

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