
Keeping Entrepreneurship at Bay:

*How the Department of the Interior Uses Flawed Science
to Foreclose the American Dream*



CAUSE
of ACTION

Advocates for Government Accountability

March 4, 2013



Investigative Report

Keeping Entrepreneurship at Bay:

How the Department of the Interior Uses Flawed Science to Foreclose the American Dream

About Cause of Action

Mission

Cause of Action is a nonprofit, nonpartisan government accountability organization that fights to protect economic opportunity when federal regulations, spending, and cronyism threaten it. Our mission is to expose the ways our government is playing politics in its use of taxpayer dollars, in its decision-making on behalf of individual Americans, and how it seeks to burden the economic opportunities that employ us and make our lives better. Cause of Action seeks to prevent the federal government from politicizing agencies, rules, and spending by bringing transparency to the federal grant and rule-making processes. Cause of Action's representation of organizations and individuals helps to educate the public about government overreach, waste, and cronyism.

Investigative Function

Cause of Action uses investigative tools to attack federal government waste, fraud, and mismanagement as well as overreach in the form of arbitrary and burdensome regulations. Cause of Action employs "sunshine advocacy" tools to achieve its goals, including document and information requests, lawsuits, ethics complaints, and requests for investigation. Through its use of advocacy and investigatory tools, Cause of Action promotes transparency, integrity, and accountability in government. Cause of Action's investigations help expose the ways our government is mismanaging federal funds and educate the public on how government can be made more accountable. Rigorous oversight can prevent taxpayer dollars from being wasted on improper activities.

Table of Contents

I. Executive Summary.....	4
II. Findings	8
III. Introduction: The Threat of Flawed Science	10
IV. DOI OIG’s February 2013 Report Ignored Binding NPS Guidance and Management Policies and Used a Flawed Methodology.	14
V. The Frost Report Dismissed Scientific Misconduct by Labeling It “Administrative Misconduct,” Suggesting the Department of Interior May Have Edited the Initial Draft to Soften Criticisms of NPS.	20
VI. Federal Agencies Misrepresented Scientific Findings to Support a False Narrative.	25
VII. NPS Prioritizes Politics Over Scientific Integrity.	27
VIII. The Flawed Science in the DEIS and FEIS Is Affecting Businesses and the General Public.	29
IX. DOI OIG Misled the Energy Committee During the Confirmation of NPS Director Jonathan Jarvis.	31
X. The MMC Cannot Effectively Function Without an Independent IG.....	33
XI. Conclusion	34

I. Executive Summary

The Marine Mammal Commission (MMC), the National Park Service (NPS), the U.S. Geological Survey (USGS) and the Department of the Interior (DOI) significantly lack oversight, accountability, and transparency, and as a result have gone unchecked in their manipulation of scientific data. This misrepresentation of data influenced a Cabinet member's decisions, was quoted in a Department of Justice filing in the U.S. Court of Appeals for the Ninth Circuit, and is negatively affecting multiple businesses around the United States.

The use of flawed and non-transparent science represents a serious failure by NPS to uphold the White House Scientific Integrity Policy, which was designed to ensure that facts, rather than political agendas would drive scientific analysis. Cause of Action and Dr. Corey Goodman, Ph.D., an independent scientist and elected member of the National Academy of Sciences (NAS), have uncovered deficiencies in the MMC, NPS, USGS and DOI, which demand a thorough review of these entities, their approach to reporting scientific data, and the lack of enforced oversight in DOI.

Secretary of the Interior Kenneth Salazar issued a decision on November 29, 2012, denying a Special Use Permit (SUP) for land belonging to NPS to Drakes Bay Oyster Company (DBOC). DBOC, owned by Kevin and Nancy Lunny, is a small, family-run, environmentally sustainable farm located inside the Point Reyes National Seashore. Salazar's decision was largely affected by misrepresented data, a perpetuation of false information, and a disregard for the law by multiple federal government offices. This business is now embroiled in a legal battle that has produced temporary relief from the Ninth Circuit that will allow DBOC to remain open until another hearing in May 2013, but does not guarantee that the business will escape a full shut down.

If upheld, the Secretary's decision will inflict enormous consequences on the Lunny family, their employees, the San Francisco Bay area community, and the oyster market in the state of California. Thirty-one employees will lose their jobs and seven families living on the property will be evicted and forced to find housing elsewhere. Millions of oysters, not yet ready to be harvested, must also be destroyed. DBOC currently supplies nearly 40 percent of the oysters for the state of California, and the false data perpetrated by the government now threatens much more than one company's profits; American taxpayers are now faced with the reality that their tax dollars are being used to support and promote false information by a Department of the Interior with little regard for accountability.

In accordance with the National Environmental Policy Act (NEPA), NPS was required to prepare a draft environmental impact statement (DEIS) and an ensuing final environmental impact statement (FEIS), intended to allow the Secretary to make an informed, reasoned decision concerning the renewal of DBOC's lease.

In conjunction with an investigation conducted by Dr. Corey Goodman, Ph.D., Cause of Action found that the data used by multiple agencies within the federal government were out of date, inapplicable, and brazenly false in their representation of the impact of DBOC on the environment.

First, the Department of Interior (DOI) Office of Inspector General's (OIG) February 2013 Report ignored data and used a flawed methodology.

In its February 7, 2013 report, DOI OIG failed to recognize scientific misconduct committed by NPS employees and an NPS contractor in the completion of the DEIS.

In the DEIS, NPS used inappropriate proxies to imitate the noise levels projected by DBOC's equipment. To represent the noise generated in 2010 by DBOC's twenty- and forty-horsepower, four-stroke oyster skiffs at a distance of fifty feet, the DEIS used data from a 1995 study measuring sound at a distance of two feet generated by a seventy horsepower two-stroke Kawasaki Jet Ski. Similarly, the DEIS used sound measurements from heavy highway construction equipment like jackhammers, concrete mixer trucks, and drill rig trucks as representative of sound generated by DBOC's handheld drills, twelve-volt oyster tumbler, and a small sixty horsepower forklift.

Despite the blatant misrepresentations of soundscape data and failure to obtain the best available science, DOI OIG found the proxies were "reasonable and justified based on mechanical similarities" to DBOC equipment, and concluded that NPS did not commit misconduct when it selected proxy data to represent DBOC's equipment instead of taking actual on-site noise measurements.

Second, the investigation by DOI Solicitor Gavin Frost lacked objectivity and independence. It improperly dismissed scientific misconduct by labeling it "administrative misconduct."

In 2007, the NAS was directed to study NPS science at Drakes Estero, pursuant to an agreement between Senator Dianne Feinstein, DBOC, and Mary A. Bomar, then-Director of the NPS. On November 24, 2010, DOI Field Solicitor Gavin Frost (Frost) began an investigation of the NPS harbor seal wildlife camera-monitoring program (Frost Report).

Although neither the NAS nor the public were aware, NPS had maintained a camera system in Drakes Estero for three years. From May 5, 2007 to June 7, 2010, NPS photographed DBOC using two cameras, resulting in nearly 300,000 photographs and accompanying detailed logs documenting the presence of each oyster boat and DBOC employees and indicating whether harbor seals were disturbed. Despite the NPS request the NAS perform a peer review of its science, NPS failed to disclose its largest dataset—the cameras, photographs, logs and conclusions—all of which contradicted NPS's claims of DBOC harbor seal disturbances.

In January 2011, Frost told Dr. Goodman that he found multiple NPS employees guilty of scientific misconduct and concluded that the EIS process for DBOC was tainted. On March 22, 2011, a redacted, revised public version of the Frost Report was released, concluding that five NPS scientists and officials violated the NPS Code of Scientific and Scholarly Conduct, committing scientific errors and appearing to have acted improperly by "blurring the line between exploration and advocacy through research." Despite finding that five NPS officials and scientists had violated the NPS Code of Scientific and Scholarly Conduct, Frost refused to characterize the violation as scientific misconduct in his report.

The Frost Report’s admission that NPS employees’ “mishandled” data and “refus[ed] . . . to modify their intuitive, but statistically and scientifically unproven, belief that DBOC mariculture activities” disturbed harbor seals in Drakes Estero indicates a deliberate intent to falsify information by NPS. Since the NPS employees were aware of the camera research project yet failed to notify DBOC or the NAS, they violated the NPS Code of Scientific and Scholarly Conduct. Thus, the violations should have been characterized as scientific misconduct, but Frost instead excused the NPS employees’ actions as “administrative misconduct.”

Third, Federal agencies misrepresented scientific findings to support a false narrative.

In September 2011, NPS determined that the approximately 300,000 photographs collected at Drakes Estero between 2007 and 2010 using remotely operated monitoring cameras did not provide enough meaningful information for inclusion in the DEIS.

The MMC reviewed the data underlying the DEIS in November 2011 and recommended further analysis of the NPS photographs for use in characterizing harbor seal disturbances. In response, NPS requested the USGS to conduct an independent evaluation of the photographs and how the camera data impacted the formation of the DEIS. Dr. Brent Stewart, an independent harbor seal behavior specialist, was assigned to provide analysis of the photographs. His recorded analysis found “no evidence of disturbance” to seals by DBOC oyster boats.

In spite of Dr. Stewart’s documented observations of “no evidence of disturbance,” the USGS public report issued on November 26, 2012 falsely concluded that “boat traffic at nearby sandbars . . . could be directly connected, or at least associated with a flushing level of disturbance” in some seals, citing two sets of photographs from May 15 and June 11, 2008.

The FEIS subsequently cited the USGS report as support for its conclusion of adverse environmental impact, stating that “[t]wo flushing disturbance events were attributed to boat traffic at nearby sand bars.” The FEIS therefore found causation between DBOC activity and harbor seal disturbances, even though the USGS report merely found correlation. This cumulative effect of serial misrepresentation—first by USGS and then by NPS—transformed Dr. Stewart’s finding of “no evidence of disturbance” into a finding of cause-and-effect.

Fourth, NPS prioritizes politics over scientific integrity by refusing to withdraw and correct flawed science, impacting businesses both nationally and worldwide.

NPS has demonstrated that it values politics over the scientific integrity of the information it disseminates. NPS’s position has consistently been that DBOC has an adverse impact on the environment within Drakes Estero, yet, NPS refuses to acknowledge the inaccuracies of the data upon which it relies.

In August 2012, Cause of Action submitted an Information Quality Act (IQA) complaint to NPS on behalf of Kevin and Nancy Lunny (owners of DBOC) and Dr. Corey Goodman. The IQA complaint focused on the scientific misrepresentations in the DEIS and requested that NPS correct these mistakes. In December 2012, NPS Director Jon Jarvis denied the IQA complaint, stating that NPS considered Cause of Action’s complaint “as a matter of discretion” because the DEIS did not form the “central basis” of Secretary Salazar’s decision. Thus, regardless of whether NPS disseminated flawed scientific data, NPS refuses to issue corrections—particularly

when that flawed science supports NPS's political agenda. Director Jarvis essentially declared that NPS science is not subject to scientific scrutiny and effectively re-defined the applicability of the IQA, NEPA, the White House Scientific Integrity Policy, and other federal policies, declaring these policies discretionary rather than mandatory.

As a result of NPS's dissemination of the DEIS and FEIS, which contain flawed data, other oyster farms are being harmed by misleading science. Dr. Bob Rheault, Executive Director of the East Coast Shellfish Growers Association referenced two cases in which "the issues raised in the DEIS [were] used to quash oyster lease applications—one in Alabama and one in South Carolina." Dr. Rheault appropriately identifies the problem by noting that scientific findings by the federal government are often treated with greater deference, even though agencies like NPS have demonstrated a complete disregard for information quality standards.

Growers from Australia and New Zealand have even expressed concern that the "false claims of marine mammal impacts would be used to thwart leases in their countries as well. When government scientists make these assertions of impact, these claims seem to carry more weight than they are made by an NGO or university researcher."

The findings in this report demonstrate the substantial misrepresentation and manipulation of scientific facts by NPS, MMS, USGS, and DOI and highlight the need for intense review and scrutiny. The corruption, lack of transparency, and void of accountability among these agencies are occurring on the dime of American taxpayers and demand serious and thorough review.

II. Findings

- **Finding:** *The National Academy of Sciences found that NPS had selectively presented, over-interpreted, or misrepresented the available scientific information on DBOC operations. The NAS also faulted NPS for having overlooked the potentially beneficial effects of oyster culture operations, noting that oyster farming in Drakes Estero contributes to water filtration, the transfer of nutrients and carbon to the sediments, and biogeochemical cycling.*
- **Finding:** *DOI OIG allowed NPS to rely on proxies for sound level measurements, rather than requiring NPS to use the best available science by taking actual on-site sound-level measurements in Drakes Estero.*
- **Finding:** *Before issuing its report, DOI OIG possessed persuasive data that NPS's proxies were inaccurate. DOI OIG fails to mention this data in its report, and appears to have ignored it altogether.*
- **Finding:** *Dr. Clark was likely deceived into believing that NPS had taken actual on-site noise measurements at DBOC. Clark states in the report that "human noise footprints from DBOC activities could have increased since 1995," suggesting that he believed the 1995 data originated from sound measurements in Drakes Estero. Clark's "Re-Review" of the DEIS in May 2012 further evidences his initial confusion over the data in the DEIS. When DOI OIG questioned Clark about his confusion, he backtracked, responding that he "did not recall making any such comments to [Dr. Goodman]." Despite possessing evidence demonstrating Clark's confusion as to the noise level values in the DEIS, such as the e-mails between Goodman and Clark, DOI OIG cited Clark's peer review as supporting the reasonableness of the selected proxies.*
- **Finding:** *NPS had maintained a camera system in Drakes Estero for three years. NPS photographed DBOC using two cameras, resulting in nearly 300,000 photographs and accompanying detailed logs documenting the presence of each oyster boat and DBOC employee and noting whether harbor seals were disturbed. NPS scientists failed to disclose their largest dataset—the cameras, photographs, logs, and observations—all of which contradicted NPS's claims to the National Academies of Science and the public regarding supposed DBOC harbor seal disturbances.*
- **Finding:** *Despite finding that five NPS officials and scientists had violated the NPS Code of Scientific and Scholarly Conduct, Frost refused to characterize the violation as scientific misconduct.*

- **Finding:** *There is no support for Frost’s determination that a violation of the NPS Code of Scientific and Scholarly Conduct constitutes “administrative misconduct” rather than scientific misconduct.*
- **Finding:** *It appears Frost’s initial conclusions were altered. The potential for improper interference by the Interior Department into Frost’s report is not insignificant, especially considering that a 2012 IG employee satisfaction survey found that only 59 percent of IG employees agreed or strongly agreed that “[t]he OIG conducts its work in a manner that is independent (free from improper influence) from the Department.” One particular employee cautioned: “Be careful with how much reports get softened to avoid ‘slamming’ the Department in the interest of maintaining a good relationship.” By replacing “scientific misconduct” with “administrative misconduct” in the Frost Report, DOI may have altered Frost’s initial findings in order to whitewash the NPS’s use of false and misleading science and avoid embarrassment to the Department. DOI special agent Richard Larrabee even commented that the Secretary’s Office receives “great deference,” suggesting it uses its influence to persuade agency employees to stand in line with the Department’s politics.*
- **Finding:** *Even though Dr. Stewart’s report found no disturbances by oyster boats, the USGS Report inappropriately asserted correlation between DBOC boats and harbor seal flushing.*
- **Finding:** *The FEIS found causation between DBOC activity and harbor seal disturbances even though the USGS Report merely found correlation.*
- **Finding:** *NPS refuses to withdraw and correct flawed science when it conflicts with NPS’s political positions.*
- **Finding:** *NPS’s NEPA process and resulting DEIS and FEIS have been used to quash oyster lease applications and continue to threaten the shellfish aquaculture industry.*
- **Finding:** *NPS’s use of flawed science will increase oyster prices, cause environmental harm and destroy jobs.*
- **Finding:** *DOI OIG made the Senate Energy Committee aware of only one allegation of scientific misconduct against Jarvis even though it was in receipt of Goodman’s May 16, 2009 complaint containing twenty-one points of scientific misconduct. DOI OIG failed to reveal to the Energy Committee the existence of Goodman’s additional letters as well as the fact that it did not investigate the vast majority of allegations against Jarvis. Instead, DOI OIG gave the Energy Committee the false impression that it completed a full review of all outstanding allegations against Jarvis.*

III. Introduction: The Threat of Flawed Science

Finding: *The National Academy of Sciences found that NPS had selectively presented, over-interpreted, or misrepresented the available scientific information on DBOC operations. The NAS also faulted NPS for having overlooked the potentially beneficial effects of oyster culture operations, noting that oyster farming in Drakes Estero contributes to water filtration, the transfer of nutrients and carbon to the sediments, and biogeochemical cycling.*

Drakes Bay Oyster Company (DBOC) is a small, family-run, environmentally sustainable oyster farm located on the shores of Drakes Estero, inside the Point Reyes National Seashore.¹ Kevin Lunny and his wife Nancy Lunny (the Lunnys) are the owners of DBOC, which carries on a tradition of commercial oyster production in Drakes Estero that dates back nearly a century.² When the Lunnys purchased the farm in December 2004, they received a Reservation of Use and Occupancy (RUO) with the National Park Service (NPS), which allowed them to operate their oyster farm within the Point Reyes National Seashore.³ By its terms, the RUO expired on November 30, 2012, but provided that NPS could issue a Special Use Permit (SUP) for the continued occupancy of the property and operation of the farm.⁴ Congress specifically enacted legislation in late 2009 authorizing the Secretary of the Department of the Interior (DOI), Ken Salazar (Salazar), to issue DBOC a SUP for an additional ten years.⁵ In July 2010, DBOC applied for a SUP.⁶

Prior to issuing or denying a SUP, NPS was required to comply with the National Environmental Policy Act (NEPA) by preparing an environmental impact statement (EIS) to inform Salazar's decision on whether to extend DBOC's lease.⁷ In September 2011, NPS prepared and publicly released a draft EIS (DEIS).⁸ In the DEIS, NPS claimed that renewing DBOC's lease would have major long-term adverse impacts on "soundscapes" and "wilderness" in Drakes Estero.⁹ On November 20, 2012—only ten days before the end of DBOC's lease—NPS released a final EIS (FEIS). The FEIS retained the DEIS's conclusions regarding DBOC's

¹ *About Drakes Bay Family Farms*, DRAKES BAY OYSTER CO., http://www.drakesbayoyster.com/about_us/ (last visited Feb. 20, 2013).

² *Id.*

³ See NAT'L PARK SERV., DRAFT ENVIRONMENTAL IMPACT STATEMENT: DRAKES BAY OYSTER COMPANY SPECIAL USE PERMIT, App'x. A-2-A-3 (Sept. 2011), available at <http://parkplanning.nps.gov/document.cfm?parkID=333&projectID=33043&documentID=43390> [hereinafter DEIS]. NPS granted DBOC a SUP in April 2008; DBOC purchased the RUO in 2005. See *id.* (Ex. 1).

⁴ See *id.* at iii (Ex. 2).

⁵ See Department of the Interior, Environment, and Related Agencies Appropriations Act of 2010, Pub. L. No. 111-88, § 124 (2009).

⁶ Declaration of Kevin Lunny in Support of Motion for Preliminary Injunction ¶ 14, *Drakes Bay Oyster Co. v. Salazar et al.*, No. 12-cv-06134-YGR (Dec. 21, 2012).

⁷ 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.18; 43 C.F.R. § 46.100(a); see also DEIS, *supra* note 3, at iii ("The purpose of this document is to use the NEPA process to engage the public and evaluate the effects of issuing a SUP . . . [to DBOC]. The results of the NEPA process [i.e., the Final EIS] will be used to inform the decision of whether a new SUP should be issued to DBOC for a period of 10 years.") (Ex. 2).

⁸ See DEIS, *supra* note 3 (Ex. 1).

⁹ *Id.* at 120-48 (Ex. 3).

impact on Drakes Estero's environment.¹⁰ NPS did not file the FEIS with the Environmental Protection Agency (EPA) as required by 40 C.F.R. § 1506.9. Because of this failure, EPA never published a notice of availability for the FEIS. NEPA regulations also specify that "[n]o decision on the proposed action shall be made" until thirty days after the publication of the notice of availability.¹¹ By making their decision before this date, NPS and DOI violated NEPA.

Shortly after the release of the FEIS, Salazar issued a memorandum of decision on November 29, 2012, informing DBOC that he would not be issuing a SUP.¹² In his memorandum, Salazar stated that the DEIS and FEIS "informed [him] . . . and have been helpful to [him] in making [his] decision."¹³ The memorandum required DBOC to remove all personal property from Drakes Estero within ninety days.¹⁴ Salazar's decision has significant consequences: thirty-one employees will lose their jobs and seven families living on the property will be evicted and forced to find housing elsewhere;¹⁵ millions of oysters, not yet ready to be harvested, will be destroyed, resulting in serious financial consequences to the Lunnys.¹⁶ The closing of the farm will also represent a huge loss to the community as it is California's largest commercial shellfish operation as well as a local, sustainable food source.¹⁷ DBOC is currently involved in litigation against DOI and NPS regarding Salazar's decision to deny a SUP.¹⁸

The attempted closure of DBOC represents the culmination of several years of flawed data and scientific misconduct. In 2007, DOI OIG conducted an investigation into allegations of scientific misconduct by NPS officials in their dealings with DBOC.¹⁹ The report found that NPS officials had "misrepresented research" in "concerted attempts" to find environmental harm from DBOC's operations.²⁰ Specifically, DOI OIG noted that NPS published a report which found DBOC oysters were "the primary source" of sedimentation in Drakes Estero, when the study upon which it relied merely concluded that oysters "could" cause sedimentation.²¹ In that same report, NPS also claimed that DBOC oyster racks "severely restricted" eelgrass growth, even though the study cited determined there were "no pronounced impacts" on eelgrass.²²

¹⁰ NAT'L PARK SERV., FINAL ENVIRONMENTAL IMPACT STATEMENT DRAKES BAY OYSTER COMPANY SPECIAL USE PERMIT, tbl. 2-6 (Nov. 2012), *available at* <http://parkplanning.nps.gov/document.cfm?parkID=333&projectID=33043&documentID=50651> [hereinafter FEIS] (Ex. 4).

¹¹ 40 C.F.R. § 1506.10(b)(2).

¹² Memorandum from Secretary Kenneth Salazar, U.S. Dep't of the Interior, to Dir., Nat'l Park Serv. (Nov. 29, 2012) (Ex. 5). Salazar did not issue a NEPA-compliant record of decision as required by 40 C.F.R. § 1505.2.

¹³ *Id.* at 5 (Ex. 5).

¹⁴ *Id.* at 2 (Ex. 5).

¹⁵ Peter Fimrite & Justin Berton, *U.S. Evicting Point Reyes Oyster Farmer*, SFGATE (Nov. 29, 2012), <http://www.sfgate.com/science/article/U-S-evicting-Point-Reyes-oyster-farmer-4077624.php> (Ex. 6); Andrew Evans, *An Unjust Oyster Ouster*, WASH. FREE BEACON (Dec. 6, 2012), <http://freebeacon.com/an-unjust-oyster-ouster/>.

¹⁶ Fimrite, *supra* note 15 (Ex. 6).

¹⁷ *Id.* (Ex. 6).

¹⁸ *See* Complaint for Declaratory and Injunctive Relief, *Drakes Bay Oyster Co. v. Salazar et al.*, No. 4:12-cv-06134-YGR (Dec. 3, 2012).

¹⁹ U.S. DEP'T OF THE INTERIOR, OFFICE OF THE INSPECTOR GEN., INVESTIGATIVE REPORT: POINT REYES NATIONAL SEASHORE (July 11, 2008) [hereinafter 2008 DOI REPORT], *available at* http://www.savedrakesbay.org/uploads/2008_DOI_OIG_Point_Reyes_report.pdf (Ex. 7).

²⁰ *Id.* at 2 (Ex. 7).

²¹ *Id.* at 12 (Ex. 7).

²² *Id.* at 19 (Ex. 7).

Similarly, the NPS report asserted that DBOC caused an 80 percent decline in harbor seals, when the available scientific literature did not support NPS's claims.²³ The NPS even cited to a 1955 Japanese study in stating that oysters contributed to sedimentation.²⁴ Criticisms of NPS science led NPS to officially withdraw its report and revise its claims.²⁵

Retractions and clarifications of NPS science on Drakes Estero led the National Academy of Sciences (NAS) to conduct an assessment of NPS science in 2009. The NAS issued a 2009 report which found that NPS had in some instances "selectively presented, over-interpreted, or misrepresented the available scientific information on DBOC operations."²⁶ The NAS concluded that "there is a lack of strong scientific evidence that shellfish farming has major adverse ecological effects on Drakes Estero."²⁷ The NAS also faulted NPS for having "exaggerated the negative and overlooked the potentially beneficial effects of the oyster culture operation."²⁸ For instance, the NAS report noted that oyster farming in Drakes Estero "will contribute to water filtration, the transfer of nutrients and carbon to the sediments, and biogeochemical cycling."²⁹ In fact, the report commented that oysters had positively contributed to the estuary's ecosystem "for millennia until human exploitation eliminated them . . . from the mid 1800s to the early 1900s."³⁰

In 2011, Congress became concerned about "the validity of the science underlying the DEIS," and directed the NAS to conduct another review.³¹ The NAS provided its report in August 2012, which recommended major revisions to the DEIS's conclusions, methodology, and data, determining that many of the DEIS's findings on the environmental impact of DBOC operations were uncertain, exaggerated, or required additional data.³² The report also found that NPS's scientific conclusions in seven of the eight "resource categories" reviewed had "moderate to high levels of uncertainty and, for many of these an equally reasonable alternate conclusion of a lower [environmental] impact intensity could be reached based on the available data and information."³³ The findings in the 2012 NAS report therefore cast significant doubt on the DEIS and the process that created it.

DOI also commissioned Atkins North America to conduct a peer review of the DEIS (the Atkins Peer Review).³⁴ The Atkins Peer Review supported some of the DEIS's soundscape

²³ NAT'L ACADEMY OF SCIENCES, SHELLFISH MARICULTURE IN DRAKES ESTERO, POINT REYES NATIONAL SEASHORE, CALIFORNIA 77 (2009) [hereinafter 2009 NAS REPORT] (Ex. 8); *see also* NAT'L PARK SERV., DRAKES ESTERO: A SHELTERED WILDERNESS ESTUARY 17 (2007) (Ex. 9).

²⁴ *See* 2008 DOI REPORT, *supra* note 19, at 13 (Ex. 7).

²⁵ *Acknowledgment of Corrections to Previous Versions of the Park News Document "Drakes Estero – A Sheltered Wilderness Estuary*, NAT'L PARK SERV., http://home.nps.gov/pore/parkmgmt/upload/planning_drakesestero_report_acknowledgment_of_corrections_070725.pdf (Ex. 10).

²⁶ 2009 NAS REPORT, *supra* note 23, at 72-73 (Ex. 11).

²⁷ *Id.* at 6 (Ex. 12).

²⁸ *Id.* at 3 (Ex. 12).

²⁹ *Id.* at 4 (Ex. 12).

³⁰ *Id.* at 3 (Ex. 12).

³¹ H.R. Rep. No. 112-331, at 1057 (2011).

³² NAT'L ACADEMY OF SCIENCES, SCIENTIFIC REVIEW OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT: DRAKES BAY OYSTER COMPANY SPECIAL USE PERMIT 5 (Aug. 2012) [hereinafter 2012 NAS REPORT] (Ex. 13).

³³ *Id.* at 3 (Aug. 2012) (Ex. 13).

³⁴ *See* ATKINS NORTH AMERICA, FINAL REPORT ON PEER REVIEW OF THE SCIENCE USED IN THE NATIONAL PARK SERVICE'S DRAFT ENVIRONMENTAL IMPACT STATEMENT: DRAKES BAY OYSTER COMPANY SPECIAL USE PERMIT,

conclusions regarding the amount of noise DBOC oyster boats and equipment generated; however, its endorsement was based on a false misunderstanding of the data the DEIS used. Short-form citations in the DEIS misled one of the peer reviewers, Dr. Christopher Clark (Clark), into believing that Noise Unlimited, Inc., on behalf of NPS, has actually measured the sound levels of DBOC's oyster boats and equipment, when in fact NPS merely used proxies to estimate the sound levels.³⁵

Numerous individuals, including Dr. Corey Goodman, an independent scientist and elected member of the NAS, also identified procedural and substantive problems with the DEIS and criticized its methods and findings—particularly the use of inaccurate proxies.³⁶ To represent the sound levels generated by DBOC's twenty- and forty-horsepower, four-stroke oyster skiffs at a distance of fifty feet, the DEIS used data from a 1995 study measuring at a distance of two feet sound levels generated by a seventy-horsepower, two-stroke Kawasaki Jet Ski operating off the coast of New Jersey.³⁷ In other words, in lieu of measuring actual data at Drakes Estero from DBOC operations, NPS imported sound data from 3,000 miles away. Similarly, the DEIS used sound-level measurements from heavy highway construction equipment like jackhammers, concrete mixer trucks, and drill rig trucks as representative of sound levels generated by DBOC's handheld drills, ¼ horsepower twelve-volt, plastic oyster tumblers, and a small sixty-horsepower forklift.³⁸ When ENVIRON International, an independent consulting firm, took actual on-site sound level measurements, it determined that the DEIS noise profile for DBOC was “substantially exaggerated.”³⁹

Like the DEIS, the FEIS misrepresented the available scientific information on DBOC operations. The FEIS misused a report published by the U.S. Geological Survey (USGS Report), which found a correlation between two harbor seal disturbances and DBOC boats.⁴⁰ In citing the USGS report, the FEIS misrepresented its findings by claiming that “[t]wo . . . disturbance events were attributed to [DBOC] boat traffic.”⁴¹ Thus, where the USGS Report merely found correlation, the FEIS claimed causation.⁴²

Atkins Project No. 10002598 (Mar. 2012), *available at* <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=284844> [hereinafter ATKINS PEER REVIEW REPORT] (Ex. 14).

³⁵ Letter from Tom St. Clair to Dr. Ralph Morgenweck, “Response to letter from R. Morgenweck to T. St. Clair dated April 19, 2012,” p. 4 (May 7, 2012) (including a “letter of clarification” from Dr. Chris Clark, the peer reviewer of the Soundscape and Wilderness sections of the DEIS, in which he reevaluates statements he made in the Atkins Peer Review Report regarding the adequacy and accuracy of the DEIS in light of new information) (Ex. 15); *see also infra* Part IV.

³⁶ *See, e.g.*, Letter from Cause of Action to Doris Lowery, Nat’l Park Serv. Washington Admin. Program Ctr. (Aug. 7, 2012) (containing Information Quality Act complaint) (Ex. 16).

³⁷ NOISE UNLIMITED, INC., BOAT NOISE TESTS USING STATIC AND FULL-THROTTLE METHODS (1995) (Ex. 17).

³⁸ DEIS, *supra* note 3 (Ex. 1); FEDERAL HIGHWAY ADMINISTRATION, ROADWAY CONSTRUCTION NOISE MODEL USER’S GUIDE (2006) (Ex. 18).

³⁹ *See* ENVIRON INTERNATIONAL, INC., COMMENTS ON DRAKES BAY OYSTER COMPANY SPECIAL USE PERMIT ENVIRONMENTAL IMPACT STATEMENT: POINT REYES NATIONAL SEA SHORE, pt. H, at 32-37 (Dec. 9, 2011) (Ex. 19).

⁴⁰ U.S. GEOLOGICAL SURVEY, ASSESSMENT OF PHOTOGRAPHS FROM WILDLIFE MONITORING CAMERAS IN DRAKES ESTERO, POINT REYES NATIONAL SEASHORE, CALIFORNIA 3 (2012) [hereinafter USGS REPORT] (Ex. 20).

⁴¹ FEIS, *supra* note 10, at 34 (Ex. 21).

⁴² In fact, the USGS Report itself contained misrepresentations. For instance, the USGS Report misrepresented the findings of Dr. Brent Stewart by asserting correlation when Stewart found “no evidence of disturbance.” *See* USGS REPORT, *supra* note 40, at 20 (Ex. 20).

The use of flawed and opaque science in the DEIS and FEIS represents a serious failure by DOI and NPS to uphold the White House Scientific Integrity Policy, which was designed to ensure that facts, rather than political agendas, would drive scientific analysis.⁴³ With hopes to improve scientific integrity within the federal government, Cause of Action has undertaken an investigation into deficiencies in DOI, NPS, USGS, and the MMC. By addressing these problems, the public can be assured that federal agencies will allow the scientific process to shape policy decisions, rather than suppressing scientific data to fit preconceived conclusions. As a result, individuals like the Lunnys will be able to pursue the American Dream through entrepreneurship, without fear that the federal government will unfairly target their business for closure.

IV. DOI OIG’s February 2013 Report Ignored Binding NPS Guidance and Management Policies and Used a Flawed Methodology.

- **Finding:** *DOI OIG allowed NPS to rely on proxies for sound level measurements, rather than requiring NPS to use the best available science by taking actual on-site sound-level measurements in Drakes Estero.*
- **Finding:** *Before issuing its report, DOI OIG possessed persuasive data that NPS’s proxies were inaccurate. DOI OIG fails to mention this data in its report, and appears to have ignored it altogether.*
- **Finding:** *Dr. Clark was likely deceived into believing that NPS had taken actual on-site noise measurements at DBOC. Clark states in the report that “human noise footprints from DBOC activities could have increased since 1995,” suggesting that he believed the 1995 data originated from sound measurements in Drakes Estero. Clark’s “Re-Review” of the DEIS in May 2012 further evidences his initial confusion over the data in the DEIS. When DOI OIG questioned Clark about his confusion, he backtracked, responding that he “did not recall making any such comments to [Dr. Goodman].” Despite possessing evidence demonstrating Clark’s confusion as to the noise level values in the DEIS, such as the e-mails between Goodman and Clark, DOI OIG cited Clark’s peer review as supporting the reasonableness of the selected proxies.*

In its February 7, 2013 report, DOI OIG investigated allegations that NPS employees and an NPS contractor committed scientific misconduct by misrepresenting soundscape data through inaccurate proxies in the DEIS. DOI OIG concluded that NPS did not commit misconduct when it selected proxy data to represent DBOC’s equipment, instead of taking actual on-site noise

⁴³ President Barack Obama, Remarks at the National Academy of Sciences Annual Meeting (Apr. 27, 2009) (Ex. 22).

measurements.⁴⁴ DOI OIG analyzed the proxies that NPS used, and found the proxies were “reasonable and justified based on mechanical similarities” to DBOC equipment.⁴⁵

To comply with applicable minimum information-quality standards, all scientific information that NPS disseminates in publications such as the DEIS and Atkins Peer Review Report must be, among other things, accurate and timely; based on the best available science and supporting studies and the most current information available; highly transparent; supported by reliable data, including on-site data when required by law; consistent with sound and accepted scientific practices and policies; evidence-based; reproducible by qualified third parties; and objective and unbiased in terms of both presentation and substance.⁴⁶

DOI OIG claimed that NPS met the above standards, even though NPS used proxies rather than actual on-site sound measurements. DOI OIG explained that NPS is not required to collect new data for an EIS “unless there is a clear data gap,” meaning that “no relevant information can be located” or “the situation [is] so unique that there is no information available.”⁴⁷ Further, DOI OIG claimed that neither NEPA nor NPS guidance required on-site measurements because DBOC “noise emissions had never been named as having a potential impact on the environment.”⁴⁸ This post hoc rationalization fails to acknowledge that the best available science requirement applies to *all* information NPS disseminates, regardless of whether NPS later claims that it did not anticipate the importance of that particular data. Further, the fact that NPS conducted a soundscape study in the first place suggests that it *did* believe sound would be relevant to an analysis of DBOC’s environmental impact.

Director’s Order #47, which prescribes binding⁴⁹ information-quality standards for soundscape analyses, establishes that where human-made sound allegedly causes a “noise issue,” human-made “sounds and sound levels . . . need to be measured and evaluated in the park planning process.”⁵⁰ Further, Director’s Order #47 requires NPS to develop a Soundscape Preservation and Noise Management Plan that “identif[ies] the level, nature and origin of internal and external noise sources” when doing so is necessary to address a “complex[] . . . noise

⁴⁴ U.S. DEP’T OF INTERIOR, INVESTIGATIVE REPORT OF DRAKES BAY OYSTER COMPANY ENVIRONMENTAL IMPACT STATEMENT 1 (Feb. 2013) [hereinafter DOI OIG 2013 REPORT] (Ex. 23).

⁴⁵ *Id.* at 10 (Ex. 23).

⁴⁶ See Director’s Order #11B (Ex. 24); Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763 (2001); 40 C.F.R. pt. 1502 (prescribing requirements for environmental impact statements); U.S. DEP’T OF THE INTERIOR, DEPARTMENTAL MANUAL, CHAPTER 3: INTEGRITY OF SCIENTIFIC AND SCHOLARLY ACTIVITIES (January 2011) (effective date: January 28, 2011) (Ex. 25); Nat’l Park Serv., Director’s Order #12: Conservation Planning and Environmental Impact Analysis, and Decision-Making (2011) (Ex. 26); Nat’l Park Serv., Director’s Order #47: Soundscape Preservation and Noise Management (2000) (Ex. 27); Nat’l Park Serv., Management Policies 2006 (Ex. 28).

⁴⁷ DOI OIG 2013 REPORT, *supra* note 44, at 10, 23, 25 (Ex. 23).

⁴⁸ *Id.* at 37 (Ex. 23).

⁴⁹ See Director’s Order #11B, pt. III.C (“All information will comply with current NPS and Departmental policies and guidelines.... The information will also comply with the requirements of applicable public laws ... and implementing rules, regulations, directives and instructions issued under the authority of such laws.... In addition to these standards, the information quality standards as described by OMB’s final guidelines and the Department of the Interior’s guidelines are incorporated by reference as NPS policy and standards.”) (Ex. 24).

⁵⁰ Nat’l Park Serv., Director’s Order #47: Soundscape Preservation and Noise Management p. D.5 (2000) (Ex. 27); see also DO-12 Handbook, § 1.6 (a “decision-maker,” such as the Secretary, must have access to “site-specific information”) (Ex. 29).

issue.”⁵¹ NPS did not develop a Soundscape Preservation and Noise Management Plan in connection with the DEIS. Thus, the soundscape data concerning noise generated by DBOC boats and equipment was not based on the best available science and data using the best available methods, therefore violating application information-quality guidelines.⁵²

Under DOI regulations, where information (e.g., site-specific sound measurements of DBOC boats and equipment) is “essential to a reasoned choice among alternatives” and “relevant” to evaluation of environmental impacts, NPS is required to obtain that information (e.g., by actually measuring sound generated by DBOC boats and equipment), so long as “the overall costs of obtaining it are not exorbitant (measured in both time and money).⁵³ ENVIRON International demonstrated the simplicity and efficiency of taking actual on-site measurements of sound levels at fifty feet from DBOC boats and on-shore equipment.⁵⁴ Richard Steffel, the acoustics scientist who made those measurements, took actual on-site measurements over the course of a few hours on one afternoon.⁵⁵

Further, the NAS review panel, which was tasked with evaluating the adequacy of certain aspects of the DEIS and Atkins Peer Review Report, called attention to NPS’s failure to actually measure sound levels generated by DBOC boats and equipment. Dr. Kurt Fristrup, a member of the Fort Collins Soundscape Group, indicated that he had even recommended that direct underwater measurements be taken.⁵⁶ Above-water measurements would have been drastically less expensive and quicker and easier to obtain. And in July 2010—more than one year before the DEIS was made publicly available—a federal district judge harshly criticized NPS’s decision to import old, stale soundscape data involving noise generated by Jet Skis into another NEPA analysis, concluding that NPS’s decision to use that data, rather than NPS’s most recent data, was arbitrary and capricious and violated its NEPA obligations.⁵⁷

DOI OIG nevertheless permitted NPS to use proxies instead of taking on-site sound measurements and simply accepted NPS scientists’ claims that those proxies accurately represented DBOC equipment, despite substantially varying in mechanical functions. For instance, an NPS scientist commented that the NPS contractor’s selection of representative

⁵¹ Director’s Order #47, pt. C.3 (Ex. 27).

⁵² See Management Policies 2006, § 2.1.2 (Ex. 30); DOI Departmental Manual, 305 DM 3 § 3.7.A(1) (Ex. 25); Director’s Order #11B, pt. III.A (Ex. 24). NPS’s failure to actually measure sound generated by DBOC noise generators and include that data in the DEIS violated 40 C.F.R. § 1502.22(a) as well.

⁵³ 40 C.F.R. § 1502.22(a); see also DO-12 Handbook, § 4.5G (discussing NPS’s obligations under 40 C.F.R. § 1502.22(a)) (Ex. 31).

⁵⁴ The scientists employed by Vanasse Hangen Brustlin, Inc. (VHB), the outside consultant that assisted NPS in drafting the DEIS, pride themselves in their expertise in soundscape analysis and they have produced first-rate soundscape analysis in previous EIS and EA statements they have helped prepare for various state and federal agencies. Moreover, if for any reason the NPS scientists and staff at PRNS were not up to making these easy measurements, NPS has excellent scientists at Fort Collins in the NPS Natural Sounds and Night Skies Division.

⁵⁵ See ENVIRON REPORT, *supra* note 39, at pt. H4 (Ex. 19).

⁵⁶ See National Academy of Sciences, NRC Draft Environmental Impact Statement: Drakes Bay Oyster Company Special Use Permit Committee, Drakes Bay Video O1, 1:34:31-1:34:50 (July 10, 2012), available at http://practiceproducer.com/20120710_NAS.html (last visited Feb. 28, 2013).

⁵⁷ See *Bluewater Network v. Salazar*, 721 F. Supp. 2d 7, 41 (D.D.C. 2010) (“The soundscapes analysis for PIRO is even more problematic than that conducted by Defendants for GUIs. The Pictured Rocks EA, which was produced in 2002, did not use the most recent data collected by NPS in its 2001 study of PWC noise levels. As a result, there is little data presented that measures decibel levels at PIRO.” (emphasis added)).

equipment was “the best available science at the time . . . and that the proxy data selected was high quality.”⁵⁸ The NPS scientist provided no scientific support for her belief. Similarly, DOI OIG determined that the noise of a slow-moving DBOC oyster skiff with a twenty- to forty-horsepower, four-cycle engine was accurately approximated by a seventy-plus horsepower Jet Ski.⁵⁹ DOI OIG permitted NPS to use Jet Skis to approximate the noise from DBOC’s oyster skiffs because a senior acoustics scientist at NPS “believed the proxy sound levels used to represent [DBOC’s] equipment were ‘slightly underestimated.’”⁶⁰ Even Amy Trainer, the Executive Director of the Environmental Action Committee of West Marin and an outspoken advocate for DBOC’s removal, previously stated that it would be unthinkable to suggest that NPS would use as a proxy “a completely different boat at a completely different distance at a completely different speed and throttle.”⁶¹ Thus, even DBOC opponents understand that such a proxy is an unreasonable and exaggerated measure of DBOC’s oyster skiffs’ sound levels.

DOI OIG similarly found that a quarter-horsepower, twelve volt plastic oyster tumbler generated sound levels equivalent to those generated by several-hundred-horsepower “concrete mixer trucks.” DOI OIG accepted an acoustics representative’s claim that the “oyster tumbler was likely *louder* than [the cement mixer]” without scientific proof of this assertion.⁶² DOI OIG deferred to this acoustics representative who expressed his belief that all proxies were “reasonable and justifiable.”⁶³ As such, DOI OIG also agreed that jackhammers used in roadside construction projects sufficiently represented DBOC’s handheld drills.⁶⁴

Before issuing its report, DOI OIG possessed persuasive data that NPS’s proxies were inaccurate. DOI OIG fails to mention this data in its report, and appears to have ignored it altogether. For instance, DOI OIG upheld NPS’s selection of proxies by referencing a statement made by Dr. Clark, the Atkins peer reviewer of the DEIS, in which he determined that NPS appeared to have used the best available data in its soundscape analysis.⁶⁵ Goodman had previously pointed out that Clark’s conclusion was erroneously influenced by short-form citations in the DEIS, leading Clark to believe that actual on-site sound measurements were taken.⁶⁶ The *nonpublic* June 2011 administrative version of the DEIS used the following full citations in support of its sound level measurements:

- “Noise Unlimited, Inc. Boat Noise Tests Using Static and Full Throttle Measurement Methods for the New Jersey State Police (1995).”⁶⁷

⁵⁸ DOI OIG 2013 REPORT, *supra* note 44, at 12 (Ex. 23).

⁵⁹ *Id.* at 11 (Ex. 23).

⁶⁰ *Id.* at 12 (Ex. 23).

⁶¹ Letter from Amy Trainer, Exec. Dir., Env’tl. Action Comm. of W. Marin, to Dr. Ralph Morgenweck, Scientific Integrity Officer, U.S. Dep’t of the Interior (Apr. 2, 2012) (Ex. 32).

⁶² DOI OIG 2013 REPORT, *supra* note 44, at 13 (Ex. 23).

⁶³ *Id.* at 13-14 (Ex. 23).

⁶⁴ *Id.* (Ex. 23).

⁶⁵ *Id.* at 25 (Ex. 23).

⁶⁶ *Id.* at 28-30 (Ex. 23).

⁶⁷ See DRAKES BAY OYSTER COMPANY SPECIAL USE PERMIT: DRAFT ENVIRONMENTAL IMPACT STATEMENT, INTERNAL REVIEW DRAFT, Table 3-3 (June 9, 2011). To see a visual comparison of the Internal Review Draft DEIS with the publicly released DEIS, see Dr. Corey S. Goodman, Power Point Presentation, “NPS Misrepresented and Concealed Acoustic Data and Deceived the Public and Peer Reviewers of the Draft Environmental Impact Statement (DEIS) on DBOC,” pt. 6, Slides 12-20 (Ex. 33).

- “FHWA Construction Noise User’s Guide (2006).”⁶⁸

The *publicly released* version of the DEIS that the peer reviewers had access to uses the following shortened citations:

- “Noise Unlimited, Inc., 1995.”⁶⁹
- “FHWA 2006.”⁷⁰

Clark’s initial confusion is understandable, considering that full citations to the DEIS’s data sources would have revealed that the DEIS did not use actual on-site sound level measurements, but instead relied on measurements taken in New Jersey and from roadway construction equipment. With only short-form citations available, Clark likely believed that on-site noise measurements were taken in Drakes Estero in 1995 and 2006. This is revealed in an e-mail from Clark to Goodman, in which Clark asked Goodman about the source of “representative” sound levels for DBOC boats in the DEIS: “So for the two motorboat sound levels, they too seem to have arrived in the EIS table from the New Jersey shore—correct?”⁷¹

Similarly, in an e-mail to Goodman on March 21, 2012, Clark indicates his surprise in learning that noise level values were taken in New Jersey rather than Drakes Estero, leading him to believe that DBOC’s noise levels would have been “significantly smaller” than those reported in the DEIS:

I’ve had three calls so far all asking the same basic question as to whether the reality of where the measurements came from or the inappropriate and significantly higher noise level values (from NJ!) change my opinion as to the fundamentals of the EIS. Scientifically they would in the sense that the acoustic footprints of individual anthropogenic activities would be significantly smaller than assessed from the values in Table 3.3, but not in terms of interpreting the report’s overall presentation and conclusion, which is that DBOC activities do have a measurable acoustic influence on the acoustic scene in Drakes Estero. That said, I do not believe that these activities have a biologically significant impact on wildlife, but that was not something I was asked to comment on.⁷²

With regard to the sound values in the DEIS, Clark asked, “Was this deliberate, or just the result of someone cutting and pasting and not understanding sound, sound levels, dBA, etc.?”⁷³

The Atkins Report also strongly indicates that Clark was deceived into believing that NPS had taken actual on-site noise measurements at DBOC. Clark states in the report that

⁶⁸ See *id.* (Ex. 33).

⁶⁹ See DEIS, *supra* note 3, at 204, tbl. 3-3 (Ex. 4).

⁷⁰ See *id.* (Ex. 34)

⁷¹ E-mail from Dr. Christopher Clark to Dr. Corey Goodman, “Re: time sensitive request” (March 21, 2012, 12:40:06 PM PDT) (Ex. 35).

⁷² E-mail from Dr. Clark to Dr. Goodman (Mar. 21, 2012, 12:40:06 PM PDT) (Ex. 35).

⁷³ E-mail from Dr. Clark to Dr. Goodman (Mar. 21, 2012, 2:40:44 PM PDT) (Ex. 35).

“human noise footprints from DBOC activities could have increased since 1995,” suggesting that he believed the 1995 data originated from sound measurements in Drakes Estero.⁷⁴ Clark’s “Re-Review” of the DEIS in May 2012 further evidences his initial confusion over the data in the DEIS. For instance, Clark explained that “[s]ome of those activity level values in the DEIS were not representative of actual DBOC noise-generating activities.”⁷⁵ Clark recognized the accuracy of the data collected by ENVIRON International, stating that “[t]hese are credible data relative to the received noise levels of specific DBOC noise-generating activities at relatively close ranges. As such, they revise the noise level values as presented in the DEIS.”⁷⁶ The substantial difference between actual on-site noise measurements and the proxy data suggests that the proxies were not sufficiently representative of DBOC equipment. It also suggests that Clark’s initial conclusions regarding the quality of the data in the DEIS would have been different had he understood that NPS used inaccurate proxies.

When DOI OIG questioned Clark about his confusion, he backtracked, responding that he “did not recall making any such comments to [Dr. Goodman].”⁷⁷ He maintained that he was aware that some of the soundscape data in the DEIS was representative or proxy data and was not deceived by the DEIS in conducting his peer review.⁷⁸ Despite possessing evidence demonstrating Clark’s confusion as to the noise level values in the DEIS, such as the e-mails between Goodman and Clark, DOI OIG cited Clark’s peer review as supporting the reasonableness of the selected proxies.⁷⁹ DOI OIG should have acknowledged that Clark’s prior communications contradicted his recent inability to recall his statements to Dr. Goodman. Instead, DOI OIG accepted Clark’s claims at face value, thereby allowing it to use the Atkins Report as proof of the reasonableness of NPS proxy data.

With these unsupported conclusions, DOI OIG was satisfied with the proxies NPS used to evaluate DBOC sound levels. Given the DOI OIG’s analysis, the selection of proxies in an EIS will be considered appropriate as long as a few scientists are willing to say that such proxies are “reasonable.” The NPS scientists’ idea of “reasonableness” is particularly questionable, considering their statement that EISs are not “viewed as a ‘scientific research paper,’” inferring that the selection method for proxies need not be particularly strenuous nor accurate.⁸⁰ By deferring to the subjective judgment of scientists—especially agency scientists who may be conflicted—DOI OIG demonstrates that it lacks any measurable standards for determining whether a proxy is sufficiently representative of a particular piece of equipment. While DOI OIG agrees that researchers must make a “reasonable effort to fill data gaps” by choosing proxies with mechanical similarities, it failed to require NPS to explain what methods and criteria it used to conclude that the selected proxies were representative of DBOC equipment,

⁷⁴ See ATKINS NORTH AMERICA, FINAL REPORT ON PEER REVIEW OF THE SCIENCE USED IN THE NATIONAL PARK SERVICE’S DRAFT ENVIRONMENTAL IMPACT STATEMENT: DRAKES BAY OYSTER COMPANY SPECIAL USE PERMIT, Atkins Project No. 10002598, at 4 (Mar. 2012) (Ex. 36).

⁷⁵ Letter from Tom St. Clair to Dr. Ralph Morgenweck, “Response to letter from R. Morgenweck to T. St. Clair dated April 19, 2012” (May 7, 2012) (Ex. 15).

⁷⁶ *Id.* (Ex. 15)

⁷⁷ DOI OIG 2013 REPORT, *supra* note 44, at 30 (Ex. 23).

⁷⁸ *Id.* (Ex. 23).

⁷⁹ *Id.* at 25 (Ex. 23).

⁸⁰ *Id.* at 24 (Ex. 23).

other than relying on conclusory statements affirming the “reasonableness” of those proxies.⁸¹

Recommendation: *Require DOI OIG to re-do its investigation into NPS’s use of sound level proxies. Further, require NPS to use on-site sound measurements, or at a minimum, establish scientific criteria and methods for selecting and evaluating proxies.*

V. The Frost Report Dismissed Scientific Misconduct by Labeling It “Administrative Misconduct,” Suggesting the Department of Interior May Have Edited the Initial Draft to Soften Criticisms of NPS.

- **Finding:** *NPS had maintained a camera system in Drakes Estero for three years. NPS photographed DBOC using two cameras, resulting in nearly 300,000 photographs and accompanying detailed logs documenting the presence of each oyster boat and DBOC employee and noting whether harbor seals were disturbed. NPS scientists failed to disclose their largest dataset—the cameras, photographs, logs, and observations—all of which contradicted NPS’s claims to the National Academies of Science and the public regarding supposed DBOC harbor seal disturbances.*
- **Finding:** *Despite finding that five NPS officials and scientists had violated the NPS Code of Scientific and Scholarly Conduct, Frost refused to characterize the violation as scientific misconduct.*
- **Finding:** *There is no support for Frost’s determination that a violation of the NPS Code of Scientific and Scholarly Conduct constitutes “administrative misconduct” rather than scientific misconduct.*
- **Finding:** *It appears Frost’s initial conclusions were altered. The potential for improper interference by the Interior Department into Frost’s report is not insignificant, especially considering that a 2012 IG employee satisfaction survey found that only 59 percent of IG employees agreed or strongly agreed that “[t]he OIG conducts its work in a manner that is independent (free from improper influence) from the Department.” One particular employee cautioned: “Be careful with how much reports get softened to avoid ‘slamming’ the Department in the interest of maintaining a good relationship.” By replacing “scientific misconduct” with “administrative misconduct” in the Frost Report, DOI may have altered Frost’s initial findings in order to whitewash the NPS’s use of false and misleading science and avoid embarrassment to the Department. DOI special agent Richard Larrabee even commented that the Secretary’s Office receives*

⁸¹ *Id.* at 25 (Ex. 23).

“great deference,” suggesting it uses its influence to persuade agency employees to stand in line with the Department’s politics.

In 2007, the NAS was directed to study NPS science at Drakes Estero, pursuant to an agreement between Senator Dianne Feinstein, DBOC, and then-Director of NPS Mary A. Bomar.⁸² The NAS subsequently published a report in 2009 (NAS Report) assessing DBOC’s impact on Drakes Estero.⁸³ The NAS Report found that NPS “selectively present[ed] harbor seal survey data” and “over-interpret[ed] the disturbance data,” causing the NAS to conclude that “there is a lack of strong scientific evidence that shellfish farming has major adverse ecological effects on Drakes Estero.”⁸⁴ In addressing the veracity of several observations of harbor seal disturbances, the NAS Report acknowledged that a different monitoring system would be needed in order to accurately record disturbances. Specifically, the NAS recommended that “time and date stamped photographs” could resolve the controversy.⁸⁵

Although neither the NAS nor the public were aware, NPS had maintained a secret camera system in Drakes Estero for three years. Beginning on May 5, 2007, and lasting until June 7, 2010,⁸⁶ NPS photographed DBOC activities in Drakes Estero using two cameras, resulting in nearly 300,000 photographs and accompanying detailed logs documenting the presence of each oyster boat and DBOC employee and noting whether harbor seals were disturbed.⁸⁷ Despite NPS’s request that the NAS perform a review of NPS science, NPS scientists failed to disclose their largest dataset—the cameras, photographs, logs, and observations—all of which contradicted NPS’s claims to the NAS and the public regarding supposed DBOC harbor seal disturbances.⁸⁸ Thus, NPS for three years failed to disclose potentially exculpatory evidence, even after receiving a FOIA request seeking information on harbor seal disturbances.⁸⁹ Moreover, NPS presumably spent a substantial amount of money in running the camera program, as the cameras produced hundreds of thousands of photographs that required subsequent review by NPS personnel. Taxpayer dollars were therefore wasted after NPS ignored data that failed to substantiate the NPS’s theory of adverse impact.

In response to a complaint from Goodman alleging that NPS employees either suppressed or failed to disclose the photographic evidence, DOI OIG requested NPS to investigate allegations of scientific misconduct against NPS employees involved with the camera system.⁹⁰ NPS, in consultation with the Secretary of the Interior’s office, directed the DOI Office of the Solicitor to conduct the investigation.⁹¹ On November 29, 2010, DOI Field Solicitor Gavin Frost (Frost) began an investigation of the NPS harbor seal wildlife camera-monitoring program (Frost

⁸² 2009 NAS REPORT, *supra* note 23, at 19 (2009) (Ex. 8).

⁸³ *Id.* at 47 (Ex. 8).

⁸⁴ *Id.* at 3, 87 (Ex. 8).

⁸⁵ *Id.* at 47 (Ex. 8).

⁸⁶ DOI OFFICE OF THE SOLICITOR, PUBLIC REPORT ON ALLEGATIONS OF SCIENTIFIC MISCONDUCT AT POINT REYES NATIONAL SEASHORE, CALIFORNIA 4 (March 22, 2011) [hereinafter FROST REPORT] (Ex. 37).

⁸⁷ *Id.* at 24 (Ex. 37).

⁸⁸ *Id.* at 4, 23 (Ex. 37).

⁸⁹ *Id.* at 13 (Ex. 37).

⁹⁰ Letter from Scott L. Culver, Deputy Assistant Inspector Gen. for Investigations, to Corey Goodman (Nov. 9, 2010) (Ex. 38).

⁹¹ FROST REPORT, *supra* note 86, at 1 (Ex. 37).

Report).⁹²

As part of his investigation, Frost interviewed Goodman for over eight hours on December 15, 2010.⁹³ Subsequently, Frost and Goodman spoke by telephone on several occasions, including on January 24, 2011, for approximately twenty minutes. During the conversation, Frost told Goodman that he was nearly finished with his report and would be submitting it within a few days. Frost said that he found multiple NPS employees guilty of scientific misconduct and concluded that the EIS process for DBOC was tainted with the same bad science. Frost telephoned Kevin Lunny two days later on January 26, 2011, and again communicated his finding of scientific misconduct on the part of NPS employees. Goodman and Lunny publicly disclosed Frost's statements in the *Point Reyes Light* newspaper on April 7, 2011.⁹⁴ Frost never denied making these statements, despite being aware of their publication.⁹⁵

On March 22, 2011, a redacted and revised version of the Frost Report was publicly released. The Frost Report concluded that five NPS scientists and officials violated the NPS Code of Scientific and Scholarly Conduct.⁹⁶ The Frost Report stated that NPS employees committed scientific errors and appeared to have acted improperly, "blurring the line between exploration and advocacy through research."⁹⁷ These "mistakes stem[med] from the refusal . . . to modify their intuitive, but statistically and scientifically unproven, belief that DBOC mariculture activities" disturbed harbor seals in Drakes Estero.⁹⁸ Evidence also indicated that data was "mishandled" and that NPS employees displayed a "willingness to allow subjective beliefs . . . to guide scientific conclusions."⁹⁹ Under the NPS Code of Scientific and Scholarly Conduct, NPS employees must "fully disclose all research methods used [and] available data."¹⁰⁰ Because NPS employees were aware of the camera research project yet failed to notify DBOC or NAS, the Frost Report found that they violated the NPS Code of Scientific and Scholarly

⁹² E-mail from Christine Lehnertz, Pac. W. Region, Nat'l Park Serv., to Corey Goodman (Nov. 24, 2010, 2:56:11 PM PST) (Ex. 39).

⁹³ *Id.* ("As part of this review, you are invited to participate in a fact finding interview with Mr. Frost. He will be contacting you directly . . . for an interview to be conducted between November 29 and December 15, 2010.") (Ex. 39).

⁹⁴ Tess Elliott, *Did Frost Find Scientific Misconduct*, POINT REYES LIGHT (Apr. 7, 2011), http://www.ptreyeslight.com/Point_Reyes_Light/News_2011/Entries/2011/4/7_Did_Frost_find_scientific_misconduct.html (Ex. 40).

⁹⁵ Tess Elliott, editor of the Point Reyes Light Newspaper, spoke with Frost by phone. Elliott states:

[F]rom what I remember, he had an intense wish to explain the claims by Corey and Kevin (and I believe he confirmed those phone calls); however, he pleaded with his department to allow him to comment, but was ultimately directed to remain silent. He called back a couple of days after our initial conversation to say that he was not permitted to comment. I found him to be very personable and I sincerely believed he wanted to explain something; my impression was that he felt that the final report did not fully represent his findings.

E-mail from Tess Elliott to Cause of Action staff (Feb. 26, 2013, 10:57 AM EST).

⁹⁶ FROST REPORT, *supra* note 86, at 35 (Ex. 37).

⁹⁷ *Id.* (Ex. 37).

⁹⁸ *Id.* at 24 (Ex. 37).

⁹⁹ *Id.* at 1, 5 (Ex. 37).

¹⁰⁰ Nat'l Park Serv., Interim Guidance Document Governing Code of Conduct, Peer Review, and Information Quality Correction for National Park Service Cultural and Natural Resource Disciplines, pt. III (Jan. 31, 2008) (Ex. 42).

Conduct.¹⁰¹

Despite finding that five NPS officials and scientists had violated the NPS Code of Scientific and Scholarly Conduct, Frost refused to characterize the violation as scientific misconduct in his report. A finding of scientific misconduct requires proof by a preponderance of the evidence that an employee “knowingly supplied incorrect information with the specific intent to defraud, deceive, or mislead.”¹⁰² According to Frost, no scientific misconduct occurred because scientific misconduct, as defined in the report, consists only of violations of the Federal Research Misconduct Policy. In describing Goodman’s complaint, Frost stated:

[Goodman] opined that failure to disclose the research data represented criminal misconduct in violation of 18 U.S.C. 1001, research misconduct or ‘scientific misconduct’ as defined by Federal policies, and administrative misconduct in violation of an applicable NPS Code of Scientific and Scholarly Conduct.¹⁰³

Thus, the Frost Report separated Goodman’s complaint into three distinct categories:

- 1) Violation of a criminal code = criminal misconduct
- 2) Violation of the Federal Research Misconduct Policy = scientific misconduct
- 3) Violation of the NPS Code of Scientific Conduct = administrative misconduct

There is no support for Frost’s determination that a violation of the NPS Code of Scientific and Scholarly Conduct constitutes “administrative misconduct” rather than scientific misconduct. Frost provided no federal document for a definition of “administrative misconduct.” Neither did he provide any precedent for use of the term, as it is absent from the Federal Misconduct Policy, DOI’s Scientific Integrity Policy, and the NPS Code of Scientific and Scholarly Conduct. The NPS “Interim Guidance Document Governing Code of Conduct, Peer Review, and Information Quality Correction for NPS Cultural and Natural Resources Disciplines,” which contains the NPS Code of Scientific and Scholarly Conduct, only makes reference to “research misconduct” and “scientific or scholarly misconduct.” Further, the January 28, 2011 DOI Scientific Misconduct Policy defines a violation of the DOI Code of Scientific and Scholarly Conduct as scientific misconduct.¹⁰⁴ Thus, a violation of a code of scientific conduct in the Frost Report was not properly called scientific misconduct, but rather by a new term—“administrative misconduct.”

In excusing NPS employees’ actions, Frost appears to have gone to great lengths to avoid finding intent to deceive, a required element of scientific misconduct. After analyzing the NPS employees’ actions, the Frost Report concluded that they “intended to notify [NAS] of the

¹⁰¹ FROST REPORT, *supra* note 86, at 35 (Ex. 37).

¹⁰² *Christopher v. Dep’t of Army*, 107 M.S.P.R. 580, 586 (2008); *Delancy v. U.S. Postal Serv.*, 88 M.S.P.R. 129, 131-32 (2001); *Reed v. Office of Personnel Mgmt.*, 74 M.S.P.R. 616, 620 (1997); *Naekel v. Dep’t of Transp.*, 782 F.2d 975, 977 (Fed. Cir. 1986).

¹⁰³ FROST REPORT, *supra* note 86, at 2 (Ex. 37).

¹⁰⁴ U.S. DEP’T OF THE INTERIOR, DEPARTMENTAL MANUAL, CHAPTER 3: INTEGRITY OF SCIENTIFIC AND SCHOLARLY ACTIVITIES 5 (Jan. 28, 2011) (Ex. 25).

subject research.”¹⁰⁵ While Frost admitted that these attempts at disclosure would not foreclose an intention to deceive, he determined that the NPS description of the cameras and photographs in its submission of a briefing statement to then-Regional Director Jon Jarvis on May 1, 2009 was inconsistent with a goal of misrepresentation.¹⁰⁶ Frost states that NPS scientists anticipated that Jarvis would deliver the briefing statement to the NAS panel at an advance briefing on May 4, 2009—only one day before the NAS report was officially released to the public and only three days after a pre-release copy of the NAS report was delivered to Jarvis and others at NPS.¹⁰⁷ NAS, however, never received the briefing statement because NPS senior executives, including Jarvis, failed to deliver it.¹⁰⁸ Thus, the NAS and the public remained unaware that the cameras and accompanying logs existed.

Even assuming NPS employees intended to disclose the data, Frost failed to acknowledge that the briefing statement was not a thorough or open disclosure of the cameras, photographs, and logs. Reference to the camera system was mentioned in an attachment to the briefing statement, identified as Appendix A.¹⁰⁹ Appendix A included only three of the 300,000 photographs, without mention of the detailed logs or lack of documented harbor seal disturbances.¹¹⁰ Further, Appendix A disclosed the existence of only one of the two cameras and for only one of the three years it was in use.¹¹¹ The Frost Report concluded that this illustrated NPS scientists’ “willingness to disclose” the photographic data.¹¹²

Frost’s reliance on NPS employees’ alleged “intended disclosure” is also questionable considering that the scientists did not believe the research record included photographic materials from 2007 and 2008.¹¹³ NPS scientists refused to characterize the photographic research as scientifically sound, claiming that the photographs lacked an established research methodology and sufficient quality controls.¹¹⁴ Frost even acknowledged that NPS scientists’ characterization of the photographic data “begs the question as to why [NPS] continued the research program . . . without improving research quality.”¹¹⁵ If NPS scientists did not believe the photographic data was of sufficient quality to be included as part of the research record, it seems unreasonable for Frost to conclude that they intended to disclose data which they considered substandard.

It is concerning that Frost initially communicated to Goodman and Kevin Lunny his finding of scientific misconduct, only to later dismiss any claims of intent to deceive by subsequently labeling the scientists’ “mistakes” as “administrative misconduct.” Thus, after submitting his report to DOI for six to seven weeks of internal, non-public review, Frost’s most fundamental conclusion was altered. In a letter to Frost on April 4, 2011, Lunny recounted the details of his January 26, 2011 phone call, writing: “[Y]ou told me that you found ‘scientific

¹⁰⁵ FROST REPORT, *supra* note 86, at 32 (Ex. 37).

¹⁰⁶ *Id.* at 33 (Ex. 37).

¹⁰⁷ *Id.* at 18 (Ex. 37).

¹⁰⁸ *Id.* at 18-19 (Ex. 37).

¹⁰⁹ *Id.* at 18 (Ex. 37).

¹¹⁰ *Id.* (Ex. 37)

¹¹¹ FROST REPORT, *supra* note 86, at 18 (Ex. 37).

¹¹² *Id.* (Ex. 37).

¹¹³ *Id.* at 28 (Ex. 37).

¹¹⁴ *Id.* (Ex. 37).

¹¹⁵ *Id.* at 31 (Ex. 37).

misconduct.’ Your March 22 Report says you did not.”¹¹⁶ In an e-mail reply to Lunny on April 4, 2011, Frost did not deny Lunny’s assertion, but rather replied that he would send a complete response to Lunny’s letter by April 8, 2011, adding that he took full responsibility for all statements in his report.¹¹⁷ Frost, however, never responded. This raises doubts as to the objectivity and independence of the Frost Report, particularly whether DOI impermissibly altered Frost’s initial conclusion of scientific misconduct.

The potential for tampering by the Department is substantial, as is demonstrated in the case of DOI OIG. A 2012 IG employee satisfaction survey found that only 59 percent of IG employees agreed or strongly agreed that “[t]he OIG conducts its work in a manner that is independent (free from improper influence) from the Department.”¹¹⁸ One particular employee cautioned: “Be careful with how much reports get softened to avoid ‘slamming’ the Department in the interest of maintaining a good relationship.”¹¹⁹ In fact, it was recently determined that Acting IG Mary Kendall softened “the critical tone of [a] draft report and minimized the shortcomings in the Department’s renewable energy programs” in response to political pressure from DOI.¹²⁰ Similarly, by replacing “scientific misconduct” with “administrative misconduct” in the Frost Report, DOI may have altered Frost’s initial findings in order to whitewash the NPS’s use of false and misleading science and avoid embarrassment to the Department. DOI special agent Richard Larrabee even commented that the Secretary’s Office receives “great deference,” suggesting it uses its influence to persuade agency employees to stand in line with the Department’s politics.¹²¹

Frost’s forced analysis of NPS employees’ intent, taken in conjunction with the unprecedented use of “administrative misconduct,” calls into question the objectivity of the report. Although Goodman submitted various requests to DOI to take further action to remedy the inadequacies in the Frost Report, DOI has failed to respond.¹²²

Recommendation: *Investigate whether the Department improperly edited Frost’s report to remove findings of scientific misconduct.*

VI. Federal Agencies Misrepresented Scientific Findings to Support a False Narrative.

- **Finding:** *Even though Dr. Stewart’s report found no disturbances by oyster boats, the USGS Report inappropriately asserted correlation between DBOC boats and harbor seal flushing.*

¹¹⁶ Letter from Kevin Lunny to Gavin Frost (Apr. 4, 2011) (Ex. 43).

¹¹⁷ E-mail from Gavin Frost to Kevin Lunny (Apr. 4, 2011, 2:02 PM) (Ex. 44).

¹¹⁸ U.S. DEP’T OF THE INTERIOR, OFFICE OF INSPECTOR GEN, 2012 OIG ANNUAL SURVEY RESULTS 8 (2012) (Ex. 45).

¹¹⁹ *Id.* at 103 (Ex. 45).

¹²⁰ U.S. HOUSE OF REPRESENTATIVES, COMM. ON NAT. RESOURCES, HOLDING INTERIOR WATCHDOG ACCOUNTABLE 48 (Feb. 21, 2013) (Ex. 46).

¹²¹ *Id.* at 33 (Ex. 46).

¹²² Letter from Corey Goodman to John Dupuy, Assistant Inspector Gen. for Investigations, Office of Inspector Gen., U.S. Dep’t of the Interior (Mar. 19, 2012) (Ex. 47); Letter from Corey Goodman to John Dupuy, Assistant Inspector Gen. for Investigations, Office of Inspector Gen., U.S. Dep’t of the Interior (Sept. 14, 2011) (Ex. 48).

- **Finding:** *The FEIS found causation between DBOC activity and harbor seal disturbances even though the USGS Report merely found correlation.*

In September 2011, NPS determined that the 300,000 photographs collected by the wildlife monitoring cameras did not provide meaningful information for inclusion in the DEIS.¹²³ The MMC reviewed the data underlying the DEIS in November 2011 and recommended further analysis of the photographs for use in characterizing harbor seal disturbances.¹²⁴ In response, NPS requested the USGS to conduct an independent evaluation of the photographs and the utility of the camera data for informing the environmental impact analysis in the DEIS.¹²⁵

The USGS did not have a harbor seal behavior expert and therefore relied upon Dr. Brent Stewart, an independent harbor seal behavior specialist at Hubbs SeaWorld Research Institute in San Diego, to provide an analysis of the photographs. Dr. Stewart's analysis found no evidence of seal disturbances by DBOC oyster boats.¹²⁶ The USGS subsequently issued a public report on November 26, 2012. In contrast to Dr. Stewart's findings, the USGS Report concluded that two sets of photographs from May 15, 2008 and June 11, 2008 indicated that "boat traffic at nearby sandbars . . . could be directly connected, or at least associated with a flushing level of disturbance" in some seals.¹²⁷

Dr. Stewart's research notes reflecting those days found "no evidence of disturbance" to harbor seals.¹²⁸ On May 15, 2008, Dr. Stewart noted that some seals flushed into the water "just after boat leaves the area."¹²⁹ Thus, there was no visible connection between the stimulus and the seals flushing. He also noted that there was "very poor camera focus" that day.¹³⁰ On June 11, 2008, Dr. Stewart documented "[m]inor flushing before boat arrival, cause unknown."¹³¹ Again, he found "no obvious disturbance to seals."¹³² Even though Dr. Stewart's report found no disturbances by oyster boats, the USGS Report inappropriately asserted correlation between DBOC boats and harbor seal flushing.

The FEIS subsequently cited the USGS Report as support for its conclusion of adverse environmental impact, stating that "[t]wo flushing disturbance events were attributed to boat traffic at nearby sand bars."¹³³ The FEIS therefore found causation between DBOC activity and harbor seal disturbances, even though the USGS Report merely found correlation. Considering the history of misrepresentation by NPS and the fact that this is the *only* evidence for harbor seal disturbances over the past six years, it is likely that NPS intentionally misrepresented the USGS Report in order to support its claim of adverse impact.

¹²³ USGS REPORT, *supra* note 40, at 1 (Ex. 20).

¹²⁴ *Id.* (Ex. 20).

¹²⁵ *Id.* (Ex. 20).

¹²⁶ *Id.*, app., 1 (Ex. 20).

¹²⁷ *Id.* at 5 (Ex. 20).

¹²⁸ USGS REPORT, *supra* note 40, at app., 1 (Ex. 20).

¹²⁹ *Id.* (Ex. 20).

¹³⁰ *Id.* (Ex. 20).

¹³¹ *Id.* (Ex. 20).

¹³² *Id.* (Ex. 20).

¹³³ FEIS, *supra* note 10, at 34 (Ex. 21).

This cumulative effect of serial misrepresentations—first by USGS and then by NPS—transformed Dr. Stewart’s finding of “no evidence of disturbance” into a finding of cause-and-effect. These misrepresentations demonstrate the effect of scientific misconduct when multiple federal agencies are involved and are not held accountable for the scientific integrity of their work. Scientific misconduct often does not occur in a vacuum, but involves various agencies and officials—which can have devastating impacts on ordinary American citizens.

Recommendation: *Revise the FEIS to properly reflect Dr. Stewart’s conclusion of “no evidence of disturbance.”*

VII. NPS Prioritizes Politics Over Scientific Integrity.

- **Finding:** NPS refuses to withdraw and correct flawed science when it conflicts with NPS’s political positions.

NPS has demonstrated that it values politics over the scientific integrity of the information it disseminates. NPS’s position has consistently been that DBOC has an adverse impact on the environment within Drakes Estero. Yet, NPS refuses to acknowledge the inaccuracies of the data it relies upon. As a result of NPS’s dissemination of the flawed DEIS and FEIS, other oyster farms are being harmed by misleading science. Unless bad science is withdrawn from the public domain and corrected, faulty conclusions in the DEIS and FEIS will continue to negatively impact oyster businesses both domestically and internationally.

On August 7, 2012, Cause of Action filed a comprehensive Information Quality Act (IQA)¹³⁴ complaint on behalf of the Lunnys and Goodman.¹³⁵ The IQA complaint detailed inaccuracies in and misrepresentations of the science used in the DEIS and Atkins Peer Review, and requested that NPS withdraw both documents from the public domain until they could be corrected.¹³⁶ On October 3, 2012, NPS responded to the IQA complaint, denying the request to withdraw, correct, or reissue any of the disseminated information.¹³⁷ Instead, the decision letter stated that NPS considered Cause of Action’s complaint “as a matter of discretion” and was not required to treat the complaint as a comment on the DEIS.¹³⁸

Despite NPS’s assertion of institutional discretion, NPS is statutorily obligated to respond to IQA complaints. Under the IQA, as supplemented by mandatory Office of Management and Budget Guidelines (OMB Guidelines),¹³⁹ federal agencies such as NPS are required to “issue

¹³⁴ Treasury and General Government Appropriations Act for the Fiscal Year 2001, Pub. L. No. 106-554, § 515 (2001) (codified at 44 U.S.C. § 3516 Note). IQA complaints are also known as “Data Quality Act” complaints, or DQAs.

¹³⁵ Letter from Cause of Action to Doris Lowery, Nat’l Park Serv. Washington Admin. Program Ctr. (Aug. 7, 2012) (Ex. 16).

¹³⁶ *Id.* at ii (Ex. 16).

¹³⁷ Letter from Christine S. Lehnertz, Reg’l Dir., Pac. W. Region, Nat’l Park Serv., to Cause of Action (Oct. 3, 2012) (Ex. 49).

¹³⁸ *Id.* at 1 (Ex. 49).

¹³⁹ Office of Management and Budget, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, Final Guidelines, With Request for Public Comment 66 Fed. Reg. 49,718 (Sept. 28, 2001).

guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information” that the agency disseminates by creating mechanisms for individuals to seek correction of information that fails to comply with information quality guidelines.¹⁴⁰ Pursuant to the OMB Guidelines, NPS instituted regulations for the processing of IQA complaints in Director’s Order #11B.¹⁴¹ In processing IQA complaints, Director’s Order #11B requires NPS to evaluate the complaint and notify the complainant whether the information has been corrected, deleted, or confirmed to be accurate.¹⁴²

The requirements under Director’s Order #11B are mandatory and binding on NPS personnel, as 20 C.F.R. § 20.502 makes clear: “Employees are required to carry out the announced policies and programs of the Department and to obey proper requests and directions of supervisors.” Further, NPS’s 2006 Management Policies require NPS employees to follow the NPS Director’s established policies unless they are specifically waived or modified in writing.¹⁴³ NPS therefore has an obligation, rather than discretion, to adhere to the procedures and standards for information quality established by Director’s Order #11B.

Based on the legal requirements that bind NPS, Cause of Action appealed NPS’s decision on October 16, 2012.¹⁴⁴ The appeal noted that NPS and DOI had received two other IQA complaints within the past five years, both of which requested correction of information disseminated by NPS concerning DBOC and Drakes Estero,¹⁴⁵ and in both NPS neglected to address the merits of those complaints and failed to respond to one of them.¹⁴⁶

Jarvis subsequently denied Cause of Action’s appeal on December 21, 2012.¹⁴⁷ Jarvis explained his decision as follows:

We note that your information quality complaint appears to have been mooted by the Secretary of the Interior’s November 29, 2012 memorandum, which announced his decision to allow the [DBOC’s] authorizations to expire by their own terms. That memorandum stated that the decision was ‘based on matters of law and policy,’ that the documents challenged in your complaint ‘are not material to the legal and policy factors that provide the central basis’ for the decision, and that the decision was ‘based on the incompatibility of commercial activities in wilderness and not on the data that was asserted to be flawed.’

Accordingly, the information challenged in your complaint has not been used and will not be used in a decision-making process.¹⁴⁸

According to Jarvis, then, regardless of whether the DEIS or FEIS misrepresented

¹⁴⁰ 44 U.S.C. § 3516(b)(2)(A)-(B) Note.

¹⁴¹ Director’s Order #11B: Ensuring Quality of Information Disseminated by the National Park Service, at pt. IV.D (2002) (Ex. 24).

¹⁴² *Id.* pt. IV. D (Ex. 24).

¹⁴³ NAT’L PARK SERV., MANAGEMENT POLICIES 2006, at 3 (2006) (Ex. 28).

¹⁴⁴ Letter from Cause of Action to Margaret O’Dell, Deputy Dir., Nat’l Park Serv. (Oct. 16, 2012) (Ex. 50).

¹⁴⁵ *Id.* at 8 (Ex. 50).

¹⁴⁶ *Id.* (Ex. 50).

¹⁴⁷ Letter from Jonathan B. Jarvis, Dir., Nat’l Park Serv., to Cause of Action (Dec. 21, 2012) (Ex. 51).

¹⁴⁸ *Id.* at 1 (Ex. 51).

scientific data, the scientific integrity of these documents is unassailable and beyond accountability as long as the data did not play a “central” role in a decision. Jarvis ignores the reality that the DEIS and FEIS clearly “informed” Salazar and were “helpful to [him] in making [his] decision.”¹⁴⁹ Jarvis also ignores the reality that the data, even if not material to the “central basis” of one particular decision, may nevertheless be used in numerous other decision-making processes. More importantly, Jarvis demonstrates that NPS values politics over scientific integrity and will refuse to correct inaccuracies if that requires compromising a political position. In fact, Acting IG Mary Kendall highlighted similar problems of politicization within DOI as she described her communications with the Secretary’s staff as “highly political,” suggesting the Department has created a culture where inaccuracies are swept aside in order to accommodate the DOI’s political agenda.¹⁵⁰

While NPS claims that the FEIS was not used in a decision making process, and thus does not need to be corrected, it is clear that it relied on the FEIS when it subsequently cited it in its February 19, 2013, opposition to DBOC’s emergency motion for injunction pending appeal in the U.S. Court of Appeals for the Ninth Circuit.¹⁵¹ In arguing that the public interest is strongly against an injunction, NPS referenced the environmental harm from DBOC. Specifically, NPS relied on the FEIS and its findings of adverse impact.¹⁵² NPS concluded its argument by stating that the continuation of DBOC would harm the “environmental quality of Drakes Estero.”¹⁵³

By relying on the FEIS in litigation against DBOC, NPS proves that the FEIS is important to the decision of whether to extend DBOC’s lease. In fact, NEPA requires agencies to take a “hard look” at data and not publish an EIS that acts “as a subterfuge designed to rationalize a decision already made.”¹⁵⁴ Thus, even aside from the fact that NPS is statutorily obligated to address IQA complaints, NPS’s clear reliance on the FEIS in litigation and in its decision to deny DBOC a SUP should require it to re-assess the accuracy of the data underlying the DEIS and FEIS. NPS should not be permitted to ignore IQA complaints regarding false science in federal scientific studies while subsequently relying on those flawed documents to support its political position. Any political bias NPS has against DBOC should be irrelevant to ensuring the integrity of agency science.

VIII. The Flawed Science in the DEIS and FEIS Is Affecting Businesses and the General Public.

- **Finding:** *NPS’s NEPA process and resulting DEIS and FEIS have been used to quash oyster lease applications and continue to threaten the shellfish aquaculture industry.*

¹⁴⁹ Memorandum from Secretary Kenneth Salazar, *supra* note 12 (Ex. 5).

¹⁵⁰ HOLDING INTERIOR WATCHDOG ACCOUNTABLE, *supra* note 120, at 46 (Ex. 46).

¹⁵¹ Dep’t of the Interior’s Opp’n to Plaintiff’s Emergency Mot. for Injunction Pending Appeal, No. 4:12-CV-6134-YGR, at 20 (Feb. 19, 2013).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000).

- ***Finding:*** *NPS’s use of flawed science will increase oyster prices, cause environmental harm and destroy jobs.*

The science used in NPS’s NEPA process and resulting DEIS and FEIS is already being relied upon and causing unnecessary harm to shellfish producers in several US states as well as Australia and New Zealand. Dr. Bob Rheault (Rheault), Executive Director of the East Coast Shellfish Growers Association, wrote to Kevin Lunny on January 7, 2013, expressing concern regarding the impact of the DEIS. Rheault referenced two cases in which “the issues raised in the DEIS [were] used to quash oyster lease applications—one in Alabama and one in South Carolina.”¹⁵⁵ Rheault explained that “[t]he NPS documents have already done great harm, and we can be certain that if they are not retracted or corrected they will continue to be used against the shellfish aquaculture industry at public hearings for years to come.”¹⁵⁶ He further mentioned that growers from Australia and New Zealand

[W]ere quite concerned that the false claims of marine mammal impacts would be used to thwart leases in their countries as well. When government scientists make these assertions of impact, these claims seem to carry more weight than when they are made by an NGO or university researcher.¹⁵⁷

Rheault identifies a key problem with the position taken by NPS when he notes that scientific findings by the federal government are often treated with greater deference than those made by private actors, even when agencies like NPS have demonstrated a disregard for information quality standards. If NPS chooses to ignore IQA complaints whenever the potentially flawed data is being used to support NPS’s political agenda, then important decisions may be influenced by misleading science, resulting in undesirable, and scientifically problematic, outcomes.

Aside from impacting businesses, NPS’s use of flawed science will also likely increase oyster prices, as DBOC accounts for up to 40 percent of the commercial oyster production in California.¹⁵⁸ If demand cannot be met locally, oysters will need to be transported further, thereby causing harm to the environment and raising costs for consumers. Further, surrounding communities will be impacted as jobs formerly supplied by the farm will be destroyed. As Kevin Lunny explained: [W]hen we purchased [DBOC] . . . we saw an opportunity to revive a part of our community that would provide local jobs, sustainable products for local businesses, and a positive long-term impact on the Bay itself.”¹⁵⁹ Instead, oyster farms like DBOC and their surrounding communities will face reduced economic growth at a time when growth is needed the most.

Recommendation: *Require NPS to withdraw the DEIS and FEIS from the public domain and*

¹⁵⁵ Letter from Robert B. Rheault, Ph.D., Exec. Dir., E. Coast Shellfish Growers Ass’n, to Kevin Lunny (Jan 7, 2013) (Ex. 52).

¹⁵⁶ *Id.* (Ex. 52).

¹⁵⁷ *Id.* (Ex. 52).

¹⁵⁸ Mark Prado, *Drakes Bay Closure Could Increase Oyster Prices*, MERCURY NEWS (Feb. 19, 2013), http://www.mercurynews.com/food-wine/ci_22620185/drakes-bay-closure-could-increase-oyster-prices (Ex. 53).

¹⁵⁹ *Drakes Bay Oyster Company Promises to Fight National Park Service Decision*, CAUSE OF ACTION (Dec. 3, 2012), <http://causeofaction.org/2012/12/04/drakes-bay-oyster-company-promises-to-fight-national-park-service-decision/> (Ex. 54).

IX. DOI OIG Misled the Energy Committee During the Confirmation of NPS Director Jonathan Jarvis.

- **Finding:** *DOI OIG made the Senate Energy Committee aware of only one allegation of scientific misconduct against Jarvis even though it was in receipt of Goodman's May 16, 2009 complaint containing twenty-one points of scientific misconduct. DOI OIG failed to reveal to the Energy Committee the existence of Goodman's additional letters as well as the fact that it did not investigate the vast majority of allegations against Jarvis. Instead, DOI OIG gave the Energy Committee the false impression that it completed a full review of all outstanding allegations against Jarvis.*

Dr. Goodman wrote to Salazar on April 27, 2009,¹⁶⁰ May 10, 2009,¹⁶¹ and May 16, 2009, alleging Jonathan Jarvis, then-NPS Regional Director, and the officials and scientists who reported to him, engaged in scientific misconduct.¹⁶² The May 16, 2009 letter to Salazar described a twenty-one point case for scientific misconduct by Jarvis.¹⁶³ Jarvis replied to Salazar on May 17, 2009, but responded to seven of the twenty-one points, leaving fourteen points unanswered.¹⁶⁴ DOI OIG ultimately conducted an investigation of only one point of scientific misconduct, which it subsequently dismissed.¹⁶⁵ DOI OIG's refusal to address scientific integrity complaints is not uncommon, particularly when the complaints involve political appointees or Administration priorities.¹⁶⁶ In fact, DOI fired a scientific integrity officer in February 2012 for revealing scientific inaccuracies in a draft Department press release.¹⁶⁷

Around the time Jarvis was confirmed as Director of NPS, DOI OIG wrote a misleading memorandum to the Senate Committee on Energy and Natural Resources (Energy Committee) suggesting that it had investigated all of the allegations of scientific misconduct against Jarvis. The July 24, 2009 memorandum stated:

On July 15, 2009, the [OIG] received a complaint from Dr. Corey S. Goodman . . . requesting an investigation of Jonathan Jarvis for misconduct and ethics violations. . . . We have completed an inquiry into this allegation and we have

¹⁶⁰ Letter from Dr. Corey Goodman to Kenneth Salazar, Sec'y, U.S. Dep't of the Interior (Apr. 27, 2009) (Ex. 55).

¹⁶¹ Letter from Dr. Corey Goodman to Kenneth Salazar, Sec'y, U.S. Dep't of the Interior (May 10, 2009) (Ex. 56).

¹⁶² Letter from Dr. Corey Goodman to Kenneth Salazar, Sec'y, U.S. Dep't of the Interior (May 16, 2009) (Ex. 57).

¹⁶³ *Id.* (Ex. 57).

¹⁶⁴ Letter from Jonathan Jarvis, Dir., Nat'l Park Serv., to John Holdren, Dir. White House Office of Sci. and Tech. Policy (May 17, 2009) (Ex. 58).

¹⁶⁵ Memorandum from John E. Dupuy, Assistant Inspector Gen. for Investigations, U.S. Dep't of the Interior, to Renee Stone, Deputy Chief of Staff, U.S. Dep't of the Interior (July 24, 2009) (Ex. 59).

¹⁶⁶ HOLDING INTERIOR WATCHDOG ACCOUNTABLE, *supra* note 120, at 1 (Ex. 46).

¹⁶⁷ *Id.* at 59-62 (Ex. 46).

found no evidence to support this complaint.¹⁶⁸

Based on the DOI OIG memorandum, Senator Jeff Bingaman (Bingaman) opened Jarvis's nomination hearing by stating:

[T]he committee is aware of an allegation that was made against Mr. Jarvis related to the operation of an oyster farm in the Point Reyes National Seashore. [DOI OIG] has completed an inquiry into that allegation and has reported that it has found no evidence to support the allegation.¹⁶⁹

According to Bingaman's statement, it appears the Energy Committee was aware of only one allegation of scientific misconduct against Jarvis. At the time DOI OIG sent the memorandum to the Energy Committee, however, it was in receipt of Goodman's May 16, 2009 complaint containing twenty-one points of scientific misconduct. DOI OIG failed to reveal the existence of Goodman's additional letters as well as the fact that it did not investigate the vast majority of allegations against Jarvis. Instead, DOI OIG gave the Energy Committee the false impression that it completed a full review of all outstanding allegations against Jarvis.

On February 13, 2012, Senators David Vitter and James Inhofe, suspecting that DOI OIG did not disclose all charges of scientific misconduct during Jarvis's nomination, questioned DOI as to whether the Energy Committee had all three of Dr. Goodman's letters and was aware that Jarvis had failed to respond to most of the twenty-one points.¹⁷⁰ On May 30, 2012, Rachel Jacobson (Jacobson), the Acting Assistant Secretary for Fish and Wildlife and Parks, responded to the Senators on behalf of Salazar :

The Department [of the Interior] has taken very seriously the allegation of scientific misconduct and concerns about scientific quality included in the three letters you reference . . . [T]he Senate was fully aware of the allegations made by Dr. Goodman against Director Jarvis during the pendency of his nomination and those allegations were addressed formally in the records of his confirmation hearing.¹⁷¹

To the contrary, the records of Jarvis's confirmation hearing reflect that the Senate was informed of only one allegation of misconduct. Thus, the Energy Committee was *not* fully aware of the numerous "allegations" Jacobson claimed were addressed during Jarvis's confirmation hearing.

While Jacobson stated that "[DOI] is committed to scientific integrity . . . as well as to transparency with Congress," DOI's misleading response to the Energy Committee and Senators Vitter and Inhofe militates against any claim of transparency.¹⁷² In fact, it was recently discovered in a report by the House Committee on Natural Resources that Acting IG Kendall gave inaccurate and misleading answers during at least two Committee hearings.¹⁷³ Similarly, Kendall refused to comply with a request and subpoena in 2011 from the House Committee on

¹⁶⁸ *Markowsky, Miller, Babauta, and Jarvis Nominations: Hearing to Consider the Nominations of James J. Markowsky, et al. Before the S. Comm. on Energy and Natural Res.*, 111th Cong. 63 (2009) (Ex. 60).

¹⁶⁹ *Id.* at 1 (statement of Sen. Jeff Bingaman, Chairman, S. Comm. on Energy and Natural Res.) (Ex. 61).

¹⁷⁰ Letter from Senator David Vitter & Senator James Inhofe to Kenneth Salazar, Sec'y, U.S. Dep't of the Interior (Feb. 13, 2012) (Ex. 62).

¹⁷¹ Letter from Rachel Jacobson, Acting Assistant Sec'y for Fish and Wildlife and Parks, Nat'l Park Serv., to Senator David Vitter (May 30, 2012) (Ex. 63).

¹⁷² *Id.* (Ex. 63)

¹⁷³ HOLDING INTERIOR WATCHDOG ACCOUNTABLE, *supra* note 120, at 22 (Ex. 46).

Natural Resources, even though the White House did not claim any executive privilege.¹⁷⁴ These actions suggest a pattern in DOI OIG of giving misleading information to Congress in order to cover up embarrassing missteps within the Department. Thus, it is likely that DOI OIG similarly withheld information regarding allegations of scientific misconduct against Jarvis from the Energy Committee in order to ensure his confirmation.

Recommendation: *Investigate whether DOI OIG is properly conducting investigations in response to allegations of scientific misconduct and whether it is transparently reporting these allegations to Congress.*

X. The MMC Cannot Effectively Function Without an Independent IG.

The MMC serves primarily as an oversight and advisory body, providing objective advice to the executive and legislative branches on policies needed to promote the protection and conservation of marine mammals.¹⁷⁵ Part of the MMC’s mission is “maintaining the integrity of, and promoting public trust in, the science used to inform policy decisions under the Marine Mammal Protection Act.”¹⁷⁶ Thus, the MMC places a high priority on scientific integrity and ensuring data quality.

The MMC’s Scientific Integrity Policy acknowledges that the MMC lacks an OIG, due to the small size of the agency.¹⁷⁷ Nevertheless, the policy explains that

[T]he Commission has entered into a cooperative agreement with the Inspector General of the Department of Commerce to conduct independent investigations should the need arise or if the objectivity of the Executive Director, the Chair of the Commission, or the General Counsel should be placed in question by a whistleblower’s allegations.¹⁷⁸

The “cooperative agreement” referenced in the Scientific Integrity Policy consists of a 1990 Memorandum of Understanding (MOU) between the MMC and the Department of Commerce (DOC) OIG.¹⁷⁹ There are some differences between the MMC’s representation of the 1990 MOU in its Scientific Integrity Policy and the MOU itself. For instance, while agreeing DOI OIG would investigate “criminal matters” involving the MMC, the MOU did not mention scientific misconduct *per se*.¹⁸⁰ Moreover, the MOU merely stated that the MMC Executive Director would seek the assistance of DOC OIG—not that DOC OIG would handle

¹⁷⁴ *Id.* at 17-18 (Ex. 46).

¹⁷⁵ *About the Marine Mammal Commission*, MARINE MAMMAL COMMISSION, <http://www.mmc.gov/about/welcome.shtml> (last visited Feb. 1, 2013) (Ex. 64).

¹⁷⁶ *Id.* (Ex. 64).

¹⁷⁷ Memorandum on Scientific Integrity at the Marine Mammal Commission from Timony J. Ragen, Exec. Dir., Marine Mammal Comm’n, to John P. Holdren, Dir., White House Office of Sci. and Tech. Policy (Feb. 14, 2012) (Ex. 65).

¹⁷⁸ *Id.* at 3 (Ex. 65).

¹⁷⁹ Memorandum of Understanding between the Marine Mammal Comm’n and the Dep’t of Commerce Office of the Inspector Gen. (Nov. 1990) (Ex. 66).

¹⁸⁰ *Id.* (Ex. 66).

investigations involving the Executive Director.¹⁸¹ Nevertheless, in its Scientific Integrity Policy the MMC clearly interpreted this MOU as covering scientific misconduct.

On November 7, 2012, Goodman filed a misconduct complaint with DOC OIG regarding the MMC Executive Director, Dr. Tim Ragen (Ragen).¹⁸² The complaint focused on the MMC's peer review of an NPS paper cited in the FEIS for the proposition that DBOC operations disturbed harbor seals in Drakes Estero.¹⁸³ Upon completion of its peer review, the MMC issued a report on November 22, 2011, which concluded that NPS provided enough support for its finding of correlation between DBOC activity and harbor seal behavior, although it admitted that NPS data was "scant" and "stretched to their limit."¹⁸⁴ Seven months after the MMC Report was released, Goodman alleged that Ragen essentially reversed his conclusion in a private letter, without ever publicly acknowledging his reversal.¹⁸⁵ This private reversal was the basis for Goodman's complaint against Ragen.

Upon receiving the complaint, DOC OIG responded to Goodman on December 19, 2012. DOC OIG attached a letter it had sent to the MMC regarding Goodman's complaint, which explained that the MMC Scientific Integrity Policy contained a "misrepresentation of [DOC OIG and MMC's] relationship" and encouraged Goodman to "seek alternative means for resolution."¹⁸⁶ DOC OIG further explained that the MOU was "not a binding agreement" but merely a letter of intent, which constituted an unenforceable "agreement to agree."¹⁸⁷ Thus, while the MMC has a Scientific Integrity Policy, that policy lacks oversight and provides no mechanism to investigate charges of misconduct.

Recommendation: *Establish an IG within the MMC or an agreement with another IG to oversee allegations of scientific misconduct against MMC officials.*

XI. Conclusion

Considering the substantial impact that flawed science had on the Lunnys, it is imperative that a thorough review of the above findings is conducted in order to prevent similar scenarios from occurring. By ensuring appropriate oversight of DOI, NPS, USGS, and the MMC, the public's confidence in the integrity of science can be restored and individuals like the Lunnys will be able to build businesses, grow local commerce, and pursue the American dream without improper interference from the federal government.

¹⁸¹ *Id.* (Ex. 66).

¹⁸² Letter from Dr. Corey S. Goodman to Todd J. Zinser, Inspector Gen., U.S. Dep't of Commerce (Nov. 7, 2012) (Ex. 67).

¹⁸³ *Id.* (Ex. 67)

¹⁸⁴ MARINE MAMMAL COMMISSION (MMC), MARICULTURE AND HARBOR SEALS IN DRAKES ESTERO, CALIFORNIA, at iii (Nov. 22, 2011) (Ex. 68).a

¹⁸⁵ Letter from Dr. Timothy Ragen, Exec. Dir., Marine Mammal Comm'n, to Dr. Corey Goodman (June 17, 2012) (Ex. 69).

¹⁸⁶ Letter from Todd J. Zinser, Inspector Gen., U.S. Dep't of Commerce, to the Marine Mammal Commission (Dec. 19, 2012) (Ex. 70).

¹⁸⁷ *Id.* n.1 (Ex. 70).



Advocates for Government Accountability

For press inquiries and information regarding this report:

Mary Beth Hutchins, Communications Director
(202) 400-2721

For general inquiries or to report waste, fraud or abuse:

Phone: (202) 499-4232
<http://www.causeofaction.org>
1919 Pennsylvania Ave Suite 650
Washington, DC 20006