

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard

Inverness, CA 94937

(415) 669-1209

kevin@drakesbayoyster.com

nancy@drakesbayoyster.com

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VIA EMAIL AND U.S. MAIL

Timothy J. Ragen, Ph.D.
Executive Director
Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

Re: **Marine Mammal Commission, Independent Review, National Park Service Harbor Seal Data and Management Policies, Drakes Estero**

Dear Dr. Ragen.

Thank you for your recent telephone call and for providing us with copies of the Petition submitted by the National Parks and Conservation Association (NPCA) and the Sierra Club.

On June 9, 2009, these organizations stated, in a Petition, to the Marine Mammal Commission ("MMC"):

The [National Academy report on NPS Science at Drakes Estero] report contains numerous shortfalls, misinterpretations, and inaccuracies regarding critical topics ranging from interpretation of the applicable policies (Marine Mammal Protection Act, National Park Service Management Policies, and Wilderness Act), to the dismissal of site-specific adverse impacts on harbor seals.

The NPCA and Sierra Club Petition went on to state:

The NAS report has led to conclusions of many, including some decision makers, that there is nothing to be concerned about regarding commercial oyster operations in/around seal

habitat. Unfortunately, this conclusion may very well inappropriately affect policy decisions protecting marine mammals in Drakes Estero and beyond.

On July 1, 2009, in response to the Petition, the MMC declared that:

We have decided to conduct an independent review.

According to your website, the MMC "fulfill[s] its responsibilities" under Section 202 of the Marine Mammal Protection Act by providing "informed and objective advice." You informed us that the MMC would convene an appropriate panel to conduct this review.

There are three potential panelists, two of whom were specifically referenced by you, who have been involved in previous Drakes Estero harbor seal studies or analyses. As a result, we believe they should be ineligible to participate or otherwise be involved in this review.

First, Dr. Daryl J. Boness, Chair, MMC, Committee of Scientific Advisors on Marine Mammals. Dr. Boness also serves as editor, *Journal of Marine Mammal Science*, which published the "Becker-Allen-Press Report." Following peer-review by the Journal and notification of acceptance for publication, this report was presented to the National Academy of Sciences ("NAS") in September 2008. Having been informed that Becker-Allen-Press Report contained faulty data in two drafts submitted to the Journal, Dr. Boness proceeded to publish it. Boness told us that he did not review the baseline data upon which the Becker-Allen-Press Report was based. Boness, absent a first hand review of the baseline data, nonetheless proceeded to inform Becker that "scientific misconduct" had not occurred. Dr. Boness was directly involved in NPS harbor seal data and analysis issues.

Second, Dr. Frances M.D. Gulland, Member, MMC, Committee of Scientific Advisors on Marine Mammals. She is also the director of Veterinary Science at the Marine Mammal Center in Sausalito, CA where NPS scientist, Dr. Sarah Allen, who is involved in the Drakes Estero harbor seal issue, serves on the Center's Board of Scientific Advisors. Moreover, Dr. Gulland was, according to the NPS, a peer reviewer of the NPS' "Clarification Document" that was released after *Drakes Estero: A Sheltered Wilderness Estuary* was ordered to be removed from the NPS website. When asked by DBOC, to participate in a peer review survey, she failed to respond on two separate occasions. Accordingly, she too was directly involved in NPS harbor seal data issues as well as related NPS' scientific analyses.

Third, Dr. Paul Thompson was a member of the NAS panel that produced *Shellfish Mariculture in Drakes Estero, Point Reyes National Seashore, California*. He has therefore been involved in the very report containing the harbor seal data that will be the subject of the MMC's independent review.

Given the previous involvement of these three individuals in either NPS' and/or NAS' reports relating to NPS Harbor Seal data collection, interpretation, presentation or review, these individuals are unable to meet your standard to provide "*informed and objective advice.*" Others involved in NPS reviews or the NAS panel similarly should not be included.

We request, instead, that the MMC create a panel of unbiased and impartial individuals for this independent review.

We would be happy to discuss this with you further and can be reached at (415) 669-1209 and/or kevin@drakesbayoyster.com.

We are preparing additional comments on the petition and scope of work to be submitted shortly.

As mentioned, we look forward to showing the MMC the DBOC facilities and Drakes Estero. If there is any information we can provide to assist the MMC in its independent review, please do not hesitate to contact us.

Sincerely,

Kevin Lunny

Nancy Lunny