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February 3, 2009

Dr. Susan Roberts
Executive Director
Ocean Studies Board
National Academy of Sciences
500 Fifth Street, NW
Washington, DC 20001

Re: Drakes Estero seal haulout maps

Dear Dr. Roberts,

At the demand of Senator Feinstein, the NPS chose the NAS Ocean Studies Board to independently review the scientific claims made by Point Reyes National Seashore (PRNS) scientists regarding Drakes Estero. Your panel is expected to reveal whatever misconduct is found. The items to review include the Drakes Estero, A Sheltered Wilderness Estuary Report, public testimony, newspaper articles, etc.

It is important to bring one very important issue to your attention. The subject is about a seal haulout map that was provided to the Marin County Board of Supervisors (BOS) on May 8, 2007. The PRNS staff provided the BOS a map that differs from the map that the PRNS staff provided DBOC. The map provided to the BOS was changed so that more of the oyster bags present on the sand bars now appeared to be "in" the seal haulout area.

The map provided to the BOS did not include a revision date. No one was told that the map had been changed. We recognized that the map was changed when Don Neubacher and Sarah Allen gave their presentations to the Board and showed them the (new) map in May 2007.

The map and their presentation were used to allege serious harm to seals by the Lunny Family and their workers. However, the oyster bags did not move. Only the lines on the map moved so that the existing oyster bags would be included within the new lines.

The Department of the Interior Inspector General (DOI IG) investigated the NPS officials for misconduct. The DOI IG found instances of scientific misconduct by PRNS scientists and published their findings in a report dated 07/22/09. The new, undated map released at the May 2007 BOS meeting was one of the issues reviewed by the Inspector General. As your panel is charged with identifying where the PRNS public scientific claims are

not supported by facts, it is vital that your panel include these particular issues in its review and subsequent report. We have previously submitted the IG's report to your panel, but it is important to highlight this issue in particular.

The IG report reads, in part:

Differing Seal Maps

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

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

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

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

The IG found that the maps were, in fact, changed to include more oyster bags. The IG ignored the change in the map because they were under the impression that "both versions of the map reflected oyster bags within *prohibited areas*." This is completely FALSE.

Sarah Allen referred to the 1992 seal protection protocols to substantiate this claim. There were no prohibited areas in these protocols or in any other rules. In fact, the current 1992 protocols specifically allow shellfish production in these areas. The protocols instruct us *how*, as oyster farmers, to conduct ourselves in these areas during pupping season.

This IG report publicly states that DBOC was growing oysters in prohibited areas. The NPS misrepresented the facts to the Department of the Interior's Inspector General. The IG is still apparently unaware that they were not told the truth.

The IG Report is a public report and it contains statements made by the NPS that are not supported by the scientific facts that were available to the NPS when they made their claims. This public report has not been corrected and continues to damage our business and our reputation.

DBOC has not broken any rule. DBOC did not have ANY oysters in prohibited areas in 2007 or any time before that. No agency or individual has EVER told DBOC that oysters were located in a prohibited area. No agency or individual has EVER asked or told DBOC to move a single oyster for any reason – prohibited area or not.

Another misrepresentation is also found in the above excerpt from the DOI IG Report. Apparently, to justify the change in seal haulout maps, Sarah Allen told the investigator that the new undated 2007 map was extended to include the “lateral channel’ that Lunny knew he was not supposed to use”. We did know when we could and when we couldn’t use the lateral channel and we adhered to those rules. Nevertheless, NPS made this false statement.

The 2005 and the undated 2007 seal haulout maps (attached) show that the expanded area in the 2007 map includes more of the existing growing area, not only the lateral channel. If the goal of the changed map was to include the lateral channel, it would have been easy to change the lines to include the lateral channel. Instead, the NPS changed the lines to include most of the existing oyster bags.

The NPS changed the seal haulout map. The NPS told no one. The NPS did not identify on the map that the map had been changed. The NPS did not tell DBOC of any change in the haulout area, yet the NPS used the new, undisclosed map to suggest harm was being caused by DBOC and DBOC was not following the rules.

Specifically, your panel is charged to answer this question: What conclusions can be drawn from the body of scientific studies, and how do they compare with what the NPS presented to the public? We ask that your panel fulfill its charge by addressing the NPS science presented before you by NPS, which has been shown to be false, but has become part of the public record against us and our family and our farm.

Please address the following NPS science and conclusions presented before your panel and entered into the public record by NPS:

1. NPS publicly stated that oyster bags were placed in prohibited areas by DBOC.
2. NPS publicly stated that they changed a harbor seal haulout map to include the lateral channel.

These two scientific misrepresentations still remain in the public record. They continue to harm DBOC and the Lunny family by remaining uncorrected. It is clearly the responsibility of your panel to review these misrepresentations by PRNS scientists to the IG and include these examples of misconduct in your report. They are, in fact, claims made by the NPS scientists that are not supported by the facts that were available to them.

Sincerely,

Kevin Lunny

Nancy Lunny