

# *Drakes Bay Oyster Company*

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

Re: Seal haulout areas of Drakes Estero

Dear Dr. Roberts,

It is clear that much of the controversy at Point Reyes revolves around the claims of harm to harbor seals by the Drakes Bay Oyster farmer. Not just a minimal adverse effect, but a “national emergency” caused by the oyster farmer. This is telling the public that the Lunnys refuse to listen to the rules and, therefore, are intentionally causing harm to the seals. The Point Reyes National Seashore Superintendent told our county supervisor that we were criminals because of the intentional harm to a federally protected marine mammal. We knew this was not true. We know the rules. Our staff knows the rules. We were never told by the NPS, or anyone else, that we were disturbing seals or were otherwise causing harm to the seals. We were, and are, deeply offended.

The following excerpt from the Department of the Interior Inspector General’s report on an investigation into misconduct by Federal officials at PRNS brings up a very important question that we have been asking all along: Where are the actual seal haulout areas in Drakes Estero?

According to Allen, oyster bags were placed in seal haul-out areas for the first time in 2007 due to DBOC’s dramatic increase in production. She said that according to the State of California, DBOC planned to increase its production of oysters from about 3 million in 2006 to about 9 million in 2007.

Allen recalled that she informed Neubacher about DBOC’s oyster bags being placed in prohibited areas in mid or early April 2007. She said she did not talk to Lunny about it because her job was to guide policy, not to manage. She said she did not know if Neubacher had contacted Lunny about the issue. She described NPS as being in “a reactive mode” to DBOC’s increased production.

The oysters have always been placed only in traditional growing areas. CDFG maps confirm this. CDPH maps confirm this. NPS maps confirm this.

The seals haul out along the main channel in Drakes Estero. They stay very near the channel where deep water is available. For decades this has been understood and accepted. All maps have reflected this. In 2005, after the Lunny family took over the operations of the oyster farm, the NPS started changing the maps. The population of seals did not appear to have changed. The habits of the seals did not appear to have changed. The historic oyster beds did not move. The only thing that changed is the lines on the NPS seal haulout maps. Following NPS's unexplained, huge expansion of the "haulout area", the NPS began to allege harm to the seals because of DBOC's existence in this "new" seal habitat area. In actuality, what occurred was that this new mapping of the haulout area encroached into the oyster beds that have always been used as oyster beds.

Why would the NPS now begin to include these expansive islands as haulout areas? Seals never use these newly included areas. We only see seals utilizing the beaches within about 10 yards of the deep channel. We have never seen the seals hauled out anywhere else. We have never seen the seals hauled out along the edges of the lateral channel, probably because it is so shallow. At low tide, the lateral channel is too shallow to navigate with a boat and too shallow for a seal to swim. Seals do haul out near the end of the lateral channel where it connects with the deeper main channel. The 1992 interagency seal protection protocols already closed the lateral channel during pupping season so that boats would not disturb seals at the end of the channel.

We have attached a few of the harbor seal haulout maps. In 2005, after the Lunny family became the operators of the oyster farm, the NPS produced new maps showing that the harbor seals expanded their haulout areas into locations where they have never been before. What changes in seal habits in 2005 support the map changes? For decades, none of the oyster beds were considered to be in what the NPS is now calling "seal habitat". Is the claim that DBOC expanded into harbor seal habitat supported by the science that was available?

A temporary prohibited area was first established by the California Coastal Commission in December of 2007. The CCC admitted that they were not provided with and had not looked at the NPS harbor seal database and that the only document that they received from the NPS regarding seals was the April 27, 2007 trip report alleging that DBOC disturbed seals on that day. We know that DBOC was not responsible for this disturbance. The CCC imposed this new restriction based on the "precautionary principle". They were very clear that their restrictions would be modified or removed once the issues were actually analyzed. In April of 2008, the NPS imposed this same arbitrary "prohibited area" that was created by the CCC with no data analysis whatsoever. The NPS also agreed that their restrictions would be altered or removed based on future analysis of the data.

Decades of harbor seal monitoring data has been provided to your panel. The data are very clear. The data show that unrestrained seashore visitors cause most of the disturbances to the harbor seals—visitors continuously flush literally thousands of seals into the water. It also clearly shows that disturbances caused by the trained staff at the

oyster farm are functionally zero. This supports the fact that the 1992 haulout map is correct and the protocols are working effectively.

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 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. Did the harbor seals change their behavior in 2005 to justify the huge expansion of haulout areas as shown on NPS new maps?
2. Is the claim that DBOC expanded into harbor seal habitat supported by the science that was available?
3. Did DBOC place bags in prohibited areas in mid or early 2007?
4. Do Sarah Allen's allegations of harm caused by DBOC affect decision making at PRNS? At other shellfish growing areas nationwide?

Certainly, no prohibited areas even existed through the 2007 pupping season. After this obvious misrepresentation of the facts, Allen went on to say that "her job was to guide policy". One of the questions that your panel has been asked to answer is: Have these decisions affected NPS decision making? The answer to this question would appear to be obvious.

Attached are a series of maps showing seal haulout areas.

1. The interagency map prepared in 1992 that has been controlling for 16 years.
2. The NPS unexplained map showing a sudden and unprecedented expansion of seal haulout areas in Drakes Estero, prepared in 2005.
3. The NPS undated and further expanded map submitted to the Marin County Board of Supervisors.
4. The CCC map prepared in December 2007 based solely on the NPS April 26, 2007 trip report. This is the first map that imposed a restricted area.
5. The NPS map, prepared in April 2008, and based on the CCC map showing the same restricted area that the CCC included in their map.
6. A map prepared by DBOC showing where seals haul out in Drakes Estero during low tides.

Please address these very important issues that still exist in the public record and are still doing harm to our business and our family. We anticipate seeing a full analysis of each of these points in your report.

Sincerely,

Kevin Lunny

Nancy Lunny