

Drakes Bay Oyster Company

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February 11, 2009

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

Re: NPS / Drakes Bay Oyster Farm Special Use Permit Conditions

Dear Dr. Roberts,

Oyster farming has existed continuously in Drakes Estero for nearly a century. The NPS campaign to publicly discredit the oyster farm began after the Lunny family assumed the responsibility for the oyster farming in 2005. This crusade began after the Lunnys made it clear to the NPS that they believed that oyster farming in Drakes Estero could, and should, continue past 2012. Every version of the NPS *Drakes Estero, A Sheltered Wilderness Estuary* report, which intended to illustrate environmental damage by the oyster farm, was published after the Lunnys took over. Newspaper articles and public testimony by the NPS superintendent and scientists, alleging harm to the estero, occurred after the Lunnys made it known that they believed the shellfish farming should continue after 2012.

Your panel has been reviewing the NPS allegations of environmental harm caused by the oyster farm in Drakes Estero. Dr. Sarah Allen told the Department of the Interior's Inspector General that her work is to "guide policy". It appears to be obvious that Don Neubacher and Sarah Allen's work, beginning in 2005, was indeed an effort to guide policy. Contained in the following excerpt from the Inspector General's report is the explanation for why the campaign was underway.

Anima said he let Allen know that he was "not happy" with her portrayal of his research. According to him, she did not offer a "good justification" for inaccurately referencing his work. She told him that she remembered him voicing concern about oysters contributing to sediment in a portion of Drakes Estero known as Abbott's Lagoon during a conversation they had with a USGS Scientist in the late 1980s. He recalled that she tried to justify her actions by telling him about an agreement NPS had with the oyster company, which had been sold to a new owner. She explained that the current owner of the oyster farm wanted to extend his lease with NPS when it expired and that PRNS was trying not to allow the extension of that lease.

“The current owner of the oyster farm wanted to extend his lease with the NPS and that PRNS was trying not to allow the extension of that lease”.

In the words of the DOI IG and the NPS officials: The PRNS misrepresented science to guide policy because the PRNS was trying not to allow the extension of the oyster lease. PRNS has also used the post-2005 claims of environmental harm to “guide policy” by adding restrictions to the current DBOC Special Use Permit (SUP). DBOC purchased the leasehold interest from the Johnson Oyster Company in 2005. The permit conditions that existed at that time were fully understood by DBOC. The value of the leasehold interest was based on the conditions of the Reservation of Use and Occupancy and SUPs that were in place at that time.

A new SUP was issued to DBOC from the NPS in April of 2008. NPS inserted new permit restrictions in this document, using their new claims of environmental harm by the oyster farm as the basis for the limitations. These restrictions reduce the value of the lease because they not only reduce the available growing area, but also inexplicably cap the shellfish production and increase the cost of production. We fully expect your panel to review these unprecedented restrictions and, in your report, evaluate whether or not these new restrictions were actually required based on the data available to the NPS at the time. Below are several permit restrictions that require analysis from your panel.

1. Production of all shellfish species shall be capped at current production level.
 - a. A cap on production has never existed in Drakes Estero.
 - b. A minimum production level is required by CDFG (i.e., an “either produce the minimum or lose the lease” agreement).
 - c. Is this new restriction based on the science that was available to the NPS at the time?
 - d. On what science did the NPS base this restriction?
 - e. How is this production cap justified?

2. Drakes Estero Aquaculture and Harbor Seal Protection Protocol.
 - a. The National Marine Fisheries Service, the California Department of Fish and Game and the National Park Service jointly created the harbor seal protocols in 1992. These protocols are still in force in Drakes Estero.
 - b. The new protocols include restrictions on DBOC by the NPS that exceed and are in conflict with the 1992 interagency protocols.
 - c. Did the NPS consult with NMFS or CDFG when they increased the restrictions on DBOC?
 - d. The interagency protocols closed the lateral channel during pupping season. The new NPS restrictions now close the lateral channel year-round.
 - e. The NPS has not restricted use of the lateral channel outside seal pupping season to other Drakes Estero users, including kayakers. Huge numbers of kayaks use the lateral channel while the trained oyster workers cannot.
 - f. Was the 2008 decision to close the lateral channel to oyster boats and not to kayaks based on the best science available to the NPS?

- g. Does the NPS harbor seal inventory and monitoring program database support the need for increased restrictions of use of the lateral channel for the oyster farmer and no restrictions for kayakers?
- h. The 1992 protocols had no prohibited areas. The new NPS protocols include a large area now prohibited from any use by the oyster farmer whatsoever. The prohibited area is inconsistent with the seal haulout area included in the 1992 protocols. It is also inconsistent with the area the harbor seals use currently for hauling out. No restrictions are imposed on kayakers, hikers, clammers or any other seashore visitors – the very users responsible for the majority of the seal disturbances.
- i. Was this 2008 decision to create this prohibited area based on the best science available to the NPS?
- j. Does the NPS harbor seal inventory and monitoring program database support the need for this year-round prohibited area for the oyster farmer and no restrictions for any other Drakes Estero user?

Attached is a copy of the new NPS seal protocols from the current oyster SUP, the seal protection area and a map prepared by the California Coastal Commission. The NPS based its new map on the CCC map to identify the restricted area. The CCC created the map with this restricted area without any experience in Drakes Estero, without consulting with CDFG (which has extensive experience in Drakes Estero), without consulting with DBOC and without even reviewing the NPS harbor seal monitoring database. The only seal data that the CCC used to produce this map was a now discredited April 26, 2007 “trip report” given to them by the NPS. The NPS gave the CCC nothing else regarding harbor seals. The NPS did not share the harbor seal database with the CCC.

When we review the harbor seal inventory and monitoring database, we find that the oyster farm represents an infinitesimal portion of the seal disturbances. We believe that the seal population in Drakes Estero is healthy and thriving, doing as well as any seal population on the Marin County coastline, including those that have very little human presence. We do not believe that any new restrictions for kayakers, hikers, clammers or DBOC are necessary. How can the NPS justify these new DBOC permit restrictions?

Please address these very important permit conditions that have been imposed on DBOC. We look forward to seeing a full analysis of each of these points in your report.

Sincerely,

Kevin Lunny

Nancy Lunny