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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
(MMC), Independent Review, National Park Service
Harbor Seal Data and NPS Management Policies,
Drakes Estero – Thompson Conflict of Interest**

Dear Dr. Ragen,

Thank you for providing us with copies of the petition submitted by the National Parks and Conservation Association (NPCA) and the Sierra Club and most recently, the Commission's proposed scope of work.

A month after the National Academy of Sciences released its report on National Park Service Science at Drakes Estero, the NPCA and Sierra Club 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 announced that, “we have decided to conduct an independent review” (underlining added).

According to your MMC 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.

By notice, November 10, 2009, the Commission further announced that “...it had selected a review panel.” Attached to the communication is a nine-page “DRAFT TERMS OF REFERENCE.” It identifies, among other things six proposed panel members, one of whom is Paul Thompson, Ph.D., University of Aberdeen. We believe the Commission should withdraw its invitation to Dr. Thompson to serve on this panel. Further, we believe he should be considered ineligible to participate or otherwise be involved in the Marine Mammal Commission review for the following reasons:

I. MMC REQUEST TO DR. THOMPSON FUNCTIONALLY PUTS HIM IN THE POSITION OF JUDGING HIS OWN WORK. THIS IS NOT CONSISTENT WITH THE “INDEPENDENT” STANDARD ESTABLISHED BY THE MMC.

[1] Dr. Paul Thompson was and still is a member of the National Academy of Sciences (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 was so severely criticized by the Sierra Club and the National Parks and Conservation Association and now is the subject of the MMC’s independent review.

[2] Sierra Club and NPCA assert that the NAS Report on NPS Science at Drakes Estero “contains numerous shortfalls, misinterpretations, and inaccuracies regarding critical topics...” Specifically, they cite, as an example of bad work by the NAS, the “dismissal of site-specific adverse impacts on harbor seals.” Dr. Thompson’s participation in the pending MMC panel would put him in the position of judging a body of work which he co-authored.

II. DR. THOMPSON, AS A MEMBER OF A NATIONAL ACADEMY OF SCIENCES PANEL ON NATIONAL PARK SERVICE SCIENCE AT DRAKES ESTERO, WAS THE SOLE AUTHOR OF THE CHAPTER ON HARBOR SEALS, THE SPECIFIC CHAPTER CHALLENGED BY THE SIERRA CLUB AND NATIONAL PARKS AND CONSERVATION ASSOCIATION IN ITS PETITION TO THE MARINE MAMMAL COMMISSION.

[1] According to the National Academy of Sciences Report, in draft, Dr. Thompson was the author of the chapter on harbor seals.

[2] Dr. Thompson was the author of the specific issue raised by the Sierra Club and the National Parks and Conservation Association. If Dr. Thompson serves on the MMC Panel, he would be judging his own work – an obvious conflict of interest.

III. DR. THOMPSON, WHILE SERVING ON THE NAS PANEL, NEVER SAW THE ESTERO AT LOW TIDE, NEVER ASKED A SINGLE QUESTION OF US, IGNORED OUR REQUESTS TO PRESENT EVIDENCE OF NPS ERRORS, OMISSIONS AND MISREPRESENTATIONS OF HARBOR SEAL DATA – AND PERHAPS MOST OFFENSIVE – PARTICIPATED AS A CO-AUTHOR OF A NAS REPORT BASED ON ‘FORGIVENESS’ AS A STANDARD OF JUDGEMENT.

[1] In October 2008, Dr. Thompson made his single visit to Point Reyes. Notwithstanding our request that he tour the Estero at low tide – so the relationship between the oyster farm and the harbor seals could be seen, first hand, – he did not do so. He did not inspect the very resource about which he would be making judgments, recommendations and management decisions. Low tide is when the very oyster racks and sandbars in question are visible, but Dr. Thompson never saw the very resource about which he would be making scientific conclusions.

[2] The October 2008 trip to Point Reyes included a semi-public meeting at NPS headquarters. NAS was very specific that “no new presentations” be made. Dr. Thompson, notwithstanding that determination, invited Dr. Ben Becker, National Park Service, to then make a presentation of a heretofore unseen and undisclosed do-over of his severely flawed report initially presented to the same NAS panel six weeks prior. We attended, but Dr. Thompson asked no questions of us and did not give us an opportunity to comment on the Becker II/NPS Report. Thus, a double standard was permitted.

[3] In November, 2008, a few days after the October trip to Point Reyes, the NAS Panel, in closed session, adopted a work-plan/outline for its Report which stated, as its guiding principle, referring to National Park Service science at Point Reyes National Seashore, “*sloppy use of data, but forgive the troops.*” We believe that a science review, by NAS, MMC or any other scientific body should be based on the highest scientific standards. *Forgiveness* for misleading NPS science does not meet that standard.

[4] In late December 2008, and again in January 2009, we asked to appear before the NAS panel to present evidence of scientific errors, flawed analysis and misrepresented science by the very same NPS officials and scientists who appeared before the NAS panel. Our evidence would show that NPS science – specifically related to harbor seals – was fabricated, falsified and otherwise compromised. Our requests were rejected. Dr. Thompson was part of the NAS panel which rejected those requests. He made no effort to contact us or find out what had been misrepresented. Thus, NAS published a Report, in part based on science that had been challenged. Moreover, none of the letters, reports or communications that we submitted were even referenced in the NAS Report. Officially, according to the formal record created by the NAS, neither our attempts to present evidence nor the evidence itself, even exist today in the NAS report.

[5] The NAS Panel, which issued its report in July 2008, had a mandate to examine public testimony made before the Marin County Board of Supervisors. PRNS Superintendent Don Neubacher and PRNS Scientist Sarah Allen testified that the oyster farm was responsible for an 80% decline in harbor seal populations in Drakes Estero, the harm to the seals was a “national emergency” and the Marine Mammal Commission, as of May, 2007, was “taking it up on a national level.” Such statements were false. However, the Panel ignored their own mandate to examine this testimony. Therefore, Dr. Thompson was a co-author of the NAS report which cherry-picked its mandate and failed to address key issues before it. And, Dr. Thompson was the sole author of the chapter on harbor seals. These same issues are now before the MMC.

We fully recognize that Dr. Thompson was but one of several panel members and that the issues cited above are attributed to Dr. Thompson only in his capacity as a member of a panel. The NAS staff and other panel members were also involved. If Dr. Thompson objected to any of the above, it was not apparent. If he objected and was over-ruled, he always had the option to include a dissent, which he did not elect to do.

Dr. Thompson, however, was more than that. He was the sole author of the draft chapter on harbor seals.

In conclusion, the twin MMC standards are “independent review” and “objective advice.” He meets neither. The first is obvious. If the MMC asks Dr. Thompson to participate, he would be making judgments about his own work (which is still on-going). He cannot, by definition, sit in judgment of his own work and meet the test of independence. With regard to the “objective advice” standard, Dr. Thompson did not inspect the resource, did not invite us to comment on Becker or related science issues, approved a work plan for the NAS report based on forgiveness, and cherry-picked the NAS Panel’s original mandate. Yet, he sat in technical and scientific judgment and signed the NAS Report. His actions do not meet the “objective advice” standard. Dr. Thompson would not allow us to present to the panel, would not consider our submittals and participated in a report that cherry-picked its mandate, excluding the most sensitive and provocative of the harbor seal issues.

We therefore respectfully request that Dr. Thompson not be invited to serve on this important panel.

Thank you,

Kevin Lunny

Nancy Lunny