

From: Goodman, Corey
Sent: Saturday, November 01, 2008 6:01 PM
To: Susan Roberts (sroberts@nas.edu); 'GSymmes@nas.edu';
'nhi519@abdn.ac.uk'
Subject: Becker misrepresented key fact to Dr. Thompson on Thursday

**FOR DISTRIBUTION TO THE OCEAN STUDIES BOARD
PANEL
ON NPS SCIENCE AND MARICULTURE IN DRAKES
ESTERO**

Dear Susan and Greg,

I wanted to alert you, Dr. Thompson, and the rest of your panel to the fact that Dr. Ben Becker of the National Park Service (NPS) misrepresented a very important fact in Becker's verbal answer to one of Dr. Paul Thompson's questions this past Thursday October 30, 2008. Moreover, according to how Becker verbally represented the new version of his paper to Dr. Thompson, he appears to have made the same misrepresentation in his paper in press in the journal Marine Mammal Science.

Becker previously did not include the 2008 data. As a result of my September 29, 2008 letter to your panel, he now does.

Becker's misrepresentation to Thompson and in his paper concerns his explanation for why the mean number of seals at subsite OB went up in 2008 compared to 2007, in contradiction of the model in his paper and as presented to your panel on September 4, 2008. He claims it is because Drakes Bay Oyster Company (DBOC) was not allowed to use the lateral channel in 2008 in contrast to previous years.

This is not true. Without this explanation, the 2008 data contradicts Becker's model. He misrepresented to you that regulations were imposed upon DBOC which led them to

change their protocol in 2008, which, Becker explains, led to a decrease in oyster-related disturbances in 2008. This is incorrect, as described below. His paper should be disregarded by your panel, and withdrawn from the journal.

For the purpose of this note, I will refer to Becker's original paper as presented to your panel on September 4, 2008 as the "Becker paper 1st version" and the new completely revised version of the paper that he described to Dr. Thompson on October 30, 2008 as the "Becker paper 2nd version". It is my understanding that these two versions are quite different.

You will remember that Becker did not present the 2008 pupping season data (the mean numbers of seals at subsite OB) to you on September 4, 2008, and did not include these numbers in his paper, even though they had been available to him for nearly 4 months. On September 29, 2008, I wrote to you reporting that the 2008 subsite OB data contradicted Becker's presentation, his paper, and his model: in 2008, the mean number of seals at subsite OB went up to 97 seals (compared to 75 in 2005, 88 in 2006, and 62 in 2007), while the total number of oysters in Drakes Estero also went up. Are these changes of significance? How could Becker explain that the mean number of seals went up and not down at subsite OB in 2008, when the number of oysters also went up? And why didn't Becker present this data to the NRC panel on September 4, 2008?

In his answer to Dr. Thompson's questions at the Red Barn on October 30, 2008, Becker said that this increase in seals at subsite OB in 2008 was because the recent agreements between the California Coastal Commission (CCC) and the NPS with Drakes Bay Oyster Company (DBOC) between the 2007 and 2008 pupping seasons had prohibited DBOC from

using the lateral channel between islands OB and UEN in the pupping season, and due to this lateral channel closure, there were now presumably fewer oyster-related disturbances and thus more seals at subsite OB. In other words, what changed between 2007 and 2008 was that the CCC and NPS had stopped DBOC from using the lateral channel during the pupping season. Becker used this increase in seals, when correlated with the lateral channel closure, as a correlation to show that his model was correct.

Becker's explanation is false. It is intended to mislead you. Nothing has changed, and NPS knows it, because the DBOC protocols are based on NPS documents. Had it been true, then wouldn't Becker have presented the 2008 peak pupping season (April 15 – May 15) data to you on September 4, 2008? And wouldn't he have concluded that it further validated his model? He never mentioned it.

The NPS, CDFG, and National Marine Fisheries Service came to an agreement with Johnson's Oyster Company on May 15, 1992, called the 1992 protocol, which Johnson's and now DBOC have been following ever since. The 1992 protocol explicitly prohibits oyster boats from entering the lateral channel (between islands OB and UEN) during the pupping season from March to June. The "Record of Agreement Regarding Drake's Estero Oyster Farming and Harbor Seal Protection" of May 15, 1992 states:

"The lateral channel between beds #2 and #3 and bed #1 (figure 1) are closed to boat traffic from March 15 through June 1."

It goes on to state:

"The lateral channel should be used as little as

possible between June 1 and June 30.”

DBOC has repeatedly stated that they have not used the lateral channel during the pupping season, in accord with the 1992 protocol. The peak pupping season, as defined in Becker’s paper, is April 15 to May 15. DBOC stays out of the lateral channel from March to June. NPS has never documented them doing otherwise.

In contrast to Becker’s answer to Dr. Thompson’s question, neither the December 2007 Consent Order between the CCC and DBOC, nor the April 2008 Special Use Permit (SUP) between the NPS and DBOC, changed that prohibition of the lateral channel during the pupping season, although it did extend the time window. Nothing about DBOC’s use of the lateral channel changed during the pupping season, except that the date has been extended earlier to March 1 and later to June 30. This has been confirmed by both DBOC and their lawyer who represented them during the negotiations with the CCC and NPS. All of these documents are available upon request. The NPS “Drakes Estero Aquaculture and Harbor Seal Protection Protocol” of April 2008 SUP states:

”During the breeding season, March 1 through June 30, the “Main Channel” and “Lateral Channel” of Drakes Estero will be closed to boat traffic.”

Rather, the December 2007 Consent Order with the CCC and April 2008 SUP with NPS define a new Seal Protection Area on the east sides of islands OB and UEN in which oyster operations should not extend. However, DBOC has never placed oyster bags in that area, even though their permit would have allowed them to do so. The new agreements simply codify what DBOC had already been

doing.

In summary, there was no change in DBOC operations in 2008 vs. 2007. They used the same care in avoiding the seals in 2008 vs. 2007. In both years, they stayed out of the lateral channel during pupping season. In both seasons, their oyster bags were not placed on the east side of islands OB or UEN. Nothing changed. The agreements with the CCC and NPS extended the time window of the lateral channel closure, but DBOC already obeyed this time window, and never used the lateral channel during the pupping season as defined in Becker's paper.

In Becker's September 4, 2008 presentation to your panel and his paper in press in the journal Marine Mammal Science, he used the wrong number of oysters, although he could have gotten the right number from CDFG or DBOC.

Becker also used the wrong number of months that oysters grow on subsite OB, although he could have gotten the right number from DBOC. He now reports to you that he has corrected those mistakes. He also now reports that he has included the 2008 data, but in doing so, he introduces a new error. Either Becker's misrepresentation was intentional, or alternatively, he failed to check with his own colleagues, including one of his co-authors, who are fully familiar with both the 1992 protocol and the 2007 CCC and 2008 NPS protocols.

This new mistake in Becker's presentation to Dr. Thompson on October 30, 2008 and in his 2nd version of his paper in press is disturbing, because NPS had the right information.

NPS knew that nothing had changed. NPS was a party to the 1992 protocol with Johnson's oyster farm. Neubacher and Allen know that the oyster farm has been required to stay out of the lateral channel during pupping season since

1992. Becker did not have to seek out CDFG or DBOC to get the right information. NPS had the right information – they are NPS documents. NPS officials at the Red Barn knew that Becker was misrepresenting the facts when he answered Dr. Thompson’s question, and yet they remained silent when Becker made the incorrect answer on October 30th. NPS allowed Becker to mislead your panel, and NPS similarly allowed Becker to mislead the journal Marine Mammal Science.

All of this is a distraction. When Senator Feinstein asked for an independent review of NPS science at her July 21, 2007 Olema meeting, she was asking for a review of the May 2007 Drakes Estero Report and the May 2007 NPS testimony to the Marin County Board of Supervisors. All of the NPS conclusions about the impact of DBOC on the harbor seals in that report and in NPS testimony were wrong. NPS misrepresented their own data to elected officials and the public. Two days after the Olema meeting, Neubacher removed the Drakes Estero Report from the NPS web site, as instructed by Feinstein, and inserted a statement that the Report was under scientific review. Your panel was intended to be that scientific review. But after the Olema meeting, the NPS embarked upon this new Becker study, and presented it to your panel on September 4, 2008 to distract attention from their May 2007 Report and testimony. We continue to debate the new misrepresentations in the 2008 Becker paper, when the initial misrepresentations that Feinstein wanted you to consider were made by NPS in May 2007. Although the NPS web site says that the Drakes Estero Report is under scientific review, the NPS is hoping that you will focus on the Becker paper and won’t actually review the Drakes Estero Report.

I make the following requests:

(1) Would you please make sure that either the NRC or NPS provides a copy of the Becker paper 2nd version to DBOC and me as soon as possible so that we can comment on it in a timely fashion.

(2) Would you please ask Becker to prepare a document for your panel and for us which explains and justifies why he made each of the changes he did between the 1st and 2nd versions of his paper.

(3) If the panel is considering commenting on the 2nd version of the Becker paper in your report, then would you please make sure that DBOC and I have the paper, the explanation of its changes by Becker, and sufficient time to respond to these changes before you complete your work.

Please don't hesitate to let me know if you have any questions, or would like copies of these 1992, 2007, or 2008 documents on the harbor seal protocols for DBOC.

Best wishes,

Corey

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