

# *Drakes Bay Oyster Company*

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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

Dear Dr. Ragen.

Drakes Bay Oyster Company (DBOC) submits, attached to this letter, comments and recommendations regarding the Marine Mammal Commission's (MMC) Draft Terms of Reference for its pending review of harbor seals in Drakes Estero and NPS reports and claims about the harbor seals.

In addition, we offer the following general comments:

- (1) The MMC repeatedly told us that your focus of your review will be to assess the state and overall health of the harbor seal population in Drakes Estero. Yet, the draft, as initially drafted, states that your review will examine impact from our oyster farm and other issues. We believe the draft should be reframed to focus on the totality of harbor seals in Drakes Estero. It should not be framed to bias DBOC, especially since more than 99% of the disturbances to harbor seals, based on publicly available data from NPS, come from park visitors – hikers, kayakers, clambers, airplanes and others. The Terms of Reference should accurately reflect these circumstances.
- (2) We believe the Terms of Reference can be significantly improved if contemporary NOAA reports are cited and highlighted which state that the California harbor seal population is near carrying capacity. NPS reports, prepared by Point Reyes National Seashore lead scientist, Sarah Allen, reached similar conclusions. The MMC Terms of Reference should accurately communicate these conditions.
- (3) We believe that the Terms of Reference should appropriately evaluate the impacts of “ocean conditions” on harbor seals at Drakes Estero.

- (4) The Sierra Club and NPCA declared, *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.* They should be asked, by the MMC to identify and specify the individual “*shortfalls, misinterpretations and inaccuracies.*” The Sierra Club and NPCA asked the MMC to investigate DBOC’s impacts on harbor seals, thus excluding more than 99% of disturbances documented by the NPS. The Terms of Reference should clearly indicate that, in undertaking this review, the MMC is examining the entire range of impacts and disturbances – not just those specified by these groups.
- (5) We are deeply concerned about undue influence by the National Park Service on the MMC process. In fact, such interference has already occurred. During the MMC’s August scoping trip, NPS demanded that the MMC not go into the Estero as originally planned. The MMC staff did not examine Drakes Estero. Similarly, the National Academy of Sciences panel was also influenced by NPS and never saw the Estero at low tide. We appreciate your commitment that the MMC panel will, regardless of opposition, observe the shellfish growing areas and seal haulout areas within Drakes Estero.

Finally, we request that the MMC embrace a policy of transparency in all matters associated with this review.

In anticipation of a fair and responsible process, we stand ready to participate fully and offer our full cooperation.

Thank you.

Sincerely,

Kevin Lunny

Nancy Lunny