

April 24, 2012

From: Dr. Corey S. Goodman

To: Ms. Mary Kendall, Acting Inspector General, Department of the Interior (DOI)
Dr. Ralph Morgenweck, Science Integrity Officer, Department of the Interior (DOI)
Dr. Gary Machlis, Science Integrity Officer, National Park Service (NPS)

Re: Allegations of false representations of data, concealment of data, and deception involving unnamed NPS and VHB employees who wrote, revised, and reviewed the NPS DEIS on Drakes Estero

Dear Ms. Kendall, Dr. Morgenweck, and Dr. Machlis,

On March 26, 2012, I submitted a scientific misconduct complaint to Secretary Salazar alleging false representations of data and deception by National Park Service (NPS) and Vanasse Hangen Brustlin (VHB, the contractor NPS tasked with the preparation of the draft Environmental Impact Statement or DEIS) employees who wrote, revised, and reviewed the NPS DEIS on Drakes Estero.

That original filing was deemed incomplete by NPS and DOI. The letter and attachments submitted here constitute a new filing that is now complete (given the available public record and other documents that I have reviewed) and thus supersedes the original filing.

Four days after my original filing, on March 30, Department of the Interior (DOI) Inspector General Special Agent Vincent Haecker contacted me. He scheduled an interview with me, and described the terms for an OIG review. On Tuesday April 3, Agent Haecker told me that our meeting was postponed. He then reported that Dr. Machlis (NPS Scientific Integrity Officer) called him the night before and informed him that he would be taking over the scientific misconduct complaint. Mr. Haecker told me that Dr. Machlis would be contacting me in the next day or two, and then coming out to West Marin to interview me and review the complaint.

Two days later, on April 5, having not heard from Dr. Machlis, I emailed him, asking the status and timing of the interview. He responded by email, only asking for my address. Then on Friday April 6, in lieu of scheduling a time to meet and review the complaint, I received a letter from Drs. Machlis and Morgenweck with questions about my complaint, and me as the complainant, including the identity of my affiliation.

The request for my affiliation puzzled me, since my involvement as independent citizen scientist was clearly identified. My letter to Secretary Salazar was submitted on plain white paper with no letterhead, signed with my personal post office box, and sent from my personal email address. A more complete answer is provided in the appendix.

It appears as if there is a conflict among offices and agencies within the Department of the Interior and the DOI IG as to what office and agency should conduct – and control – the investigation of the allegations of false representations and deception in the NPS DEIS. I write to all three of you because it is unclear which DOI agency will oversee the investigation into the allegations that I am bringing forward concerning NPS.

I wrote to Secretary Salazar on March 26 that there are important reasons why this

investigation of NPS employees “*should be handled by another agency*” other than NPS. **NPS should not be involved with an investigation of itself. That has become even more apparent over the past week, as explained below.**

On Friday April 6, Drs. Machlis and Morgenweck wrote to me on behalf of the Department of the Interior and the National Park Service asking for further information pursuant to Section 3.8A of the Interior Department Scientific Integrity Policy before they begin their investigation (those questions are answered in the attached appendix).

The first part of these allegations were sent previously to Interior Secretary Salazar and copied to all three of you. In that letter, I alleged that unnamed NPS and VHB employees made false representations of soundscape data in Chapter 3 of the DEIS on Drakes Estero. These false representations distorted the DEIS and deceived both the public and peer-reviewers.

The complete complaint now contains six parts, as outlined below. The original complaint to Secretary Salazar is part 2 of the complete filing. That part is refiled here with a new appendix. Please use this version for the investigation.

The body of evidence presently available indicates that unnamed NPS and VHB employees who wrote, revised, reviewed, and supervised the NPS DEIS:

- (1) Failed to follow NPS Management Policies 2006 and Director’s Order #47.**
- (2) Made false representations of key acoustic data in Chapter 3 of the DEIS.**
- (3) Made false representations of key acoustic data in Chapter 4 of the DEIS.**
- (4) Concealed key acoustic data in Chapters 3 and 4 that contradicted DEIS.**
- (5) Drove incorrect findings of major impacts in Chapter 2 of the DEIS.**
- (6) Knowingly deceived the public and peer-reviewers in the DEIS.**

Compounding these allegations, over the past few weeks, my analysis of the NPS soundscape data was hindered by NPS employees, including Dr. Machlis, who did not adhere to the DOI Code of Scientific and Scholarly Conduct by hindering and restricting access to already published and highly relevant acoustic data.

Each false representation of data in the DEIS supports the contention that the DEIS has a bias – a bias by writers intent on finding major impacts of environmental harm by Drakes Bay Oyster Company.

Data and metrics were distorted, invented, falsely represented, overestimated, underestimated, and exaggerated, and the real data concealed, all with the result of showing that DBOC boats and equipment could be heard for miles, when in reality they could not.

Tables and legends were changed from one version of the DEIS to the next not with the normal result of improving clarity and consistency, but rather with the end result of further deceiving the reader. In so doing, the DEIS became more confusing and internally inconsistent.

It is difficult to examine this record of false representations and suppression of data without coming to the conclusion that these actions were knowingly undertaken. The public and peer-reviewers were knowingly deceived – that deception appears to have been intentional.

The allegations in this complaint (parts 1-6) are limited to the soundscape analysis in the DEIS – arguably among the most important, if not the most important, data in the entire document.

There was ample NPS law and policy, as quoted multiple times in the DEIS, guiding how the soundscape analysis was to be conducted, including Director’s Order #47 and NPS Management Policies 2006 (part 1).

For example, the DEIS stated:

“This Director’s Order [#47] also directs park managers to measure acoustic conditions, differentiate existing or proposed human-made sounds that are consistent with park purposes, set acoustic goals based on the sounds deemed consistent with the park purpose, and determine which noise sources are impacting the parks (NPS 2000).”

NPS Director’s Order #47 directed park managers to:

“(1) measure baseline acoustic conditions, (2) determine which existing or proposed human-made sounds are consistent with park purposes, (3) set acoustic management goals and objectives based on those purposes, and (4) determine which noise sources are impacting the park and need to be addressed by management.”

“It is these [human-made] sounds and sound levels that need to be measured and evaluated in park planning processes to determine whether they are consistent with or destructive to soundscape management objectives.”

In disregard of those NPS requirements:

- NPS did not measure DBOC human-made sounds.
- NPS made no consistency determinations.
- NPS established no sound management goals.
- NPS did not prepare a sound management plan.

If NPS prepared plans, established goals, collected data, or made determinations, then they were withheld from the Johnsons (who owned the oyster farm until EOY 2004), the Lunnys (2005-2012), and the public.

NPS manipulated the soundscape data in the DEIS in four different ways, each biased to show a “major” environmental impact (parts 2-4).

- NPS imported 16-year old data from the New Jersey State Police, 3,000 miles away, and included them in the DEIS as if they came from Drakes Estero (part 2).
- NPS did the same with data from the Federal Highway Administration (part 2).
- Data were included in the DEIS as if they represented the major findings of a report from another agency (the VOLPE 2011 report) when they did not (part 3).
- Data were concealed – data that contradicted conclusions of the DEIS – when they should have been disclosed (part 4).

Some (e.g., Jeff Ruch, Executive Director of Public Employees for Environmental Responsibility or PEER) publicly stated that this is a “*minor*” issue. Not so. NPS

conclusions of environmental harm to harbor seals and other wildlife by noise impacts and violations of NPS noise standards are central to the EIS.

One of the major purposes of this DEIS report was to evaluate potential environmental impacts of various alternative actions. This DEIS identified fourteen areas of potential impact, and found two with “major” impact, seven with moderate impact, four with minor impact, and one with beneficial impact.

The false representations of noise data in Chapters 3 and 4 of the DEIS were responsible for one of the two findings of “major” impact (soundscape), contributed significantly to the other finding of “major” impact (wilderness), and contributed to several findings of moderate impact (birds, harbor seals, visitor experience) in the DEIS. Without these false data, the only two “major” impacts disappear or change considerably and the DEIS becomes a different document – one lacking any “major” impacts (part 5).

It is alleged that NPS and VHB employees included false representations of data, and concealed data that should have been disclosed. They wrote and revised the DEIS, a document that knowingly deceived the reader. NPS managers, by NPS rules (Director’s Order #47 and Management Policies 2006), were required to develop a soundscape management plan and to monitor soundscape data, including human-generated noise (part 1). According to the DEIS, NPS did not do so.

If NPS did monitor DBOC noise, as alleged in part 4, then those data were concealed. If recordings of DBOC noise-generators were concealed, then this would have altered the DEIS, its analyses, and its findings of environmental impact.

Readers were knowingly deceived, but was this deception intentional? As further evidence that the deception was intentional (part 6), it is alleged that revisions were made to tables in two chapters (Table 3-3 in Chapter 3 and Tables 4-2, 4-3, and 4-4 in Chapter 4) between the June non-public version to the September public version, in such a way as to further deceive the public, peer-reviewers, and decision makers. Revisions should lead to clarity and consistency, but some of these led to inconsistency with the text and other figures, and further deception. The ATKINS peer-reviewer, Dr. Christopher Clark, an expert in bio-acoustics, admitted that he was “*deceived.*”

For example, believing that the noise data in the DEIS were actual measurements of DBOC boats and equipment, Dr. Clark wrote, as part of the ATKINS peer review:

“Overall, I found that the Soundscape section provided compelling support for its conclusion ...”

“The data and synthesis presented in both sections support the conclusion that noise producing DBOC activities not only impact human experiences in the Drakes Estero but also have the potential to negatively effect wildlife in the Point Reyes National Seashore.”

“I conclude that there is ample acoustic scientific evidence by which the DEIS can determine that DBOC noise-generating activities have negative impacts on both the human visitor experience and the seashore’s wildlife.”

“The scientific evidence presented leads me to conclude that this DEIS is robust, and that its recommendation for Alternative A is substantial and justifiable.”

Dr. Clark wrote that the soundscape data were “*one of the document’s core issues*” and

believed that his comments on the “*Soundscape section readily apply to this Wilderness section.*” These were the only two sections of the DEIS that led in Chapter 2 to a finding of “major” environmental impact. Dr. Clark described the data he reviewed in Chapter 3 as follows:

“Provides some sound level data for Drakes Estero using standard techniques and metrics. Two sets of data are presented. Data (considered “best available and reasonable measurement”) were collected in 2009 (Volpe 2011) from a site two miles from the onshore DBOC operations. They use A-weighted L₅₀ values, in dBA units, as the acoustic metric. As stated in the report: “These measured levels included noise from DBOC operations and other human activities, and they included natural sound energy from portions of the audio spectrum well above the noise energy generated by DBOC.” Table 3-3 shows noise level values within close proximity to specific DBOC noise sources. According to this table these data were collected by Noise Unlimited, Inc. (1995) and represent two types of relatively small motorboat engines (20 horse power [HP] and 40 HP), a diesel forklift, pneumatic drills and an oyster tumbler. Noise level values in dBA are given relative to 50 feet from each of these sources. The document concludes that these measures are reasonable representations of the existing acoustic environment by which to make comparisons.”

- Dr. Clark believed the measurements in Table 3-3 provided “*sound level data for Drakes Estero*” from “*specific DBOC noise sources*” when Table 3-3 had not.
- Dr. Clark believed that the NOISE UNLIMITED 1995 report had measured DBOC motorboat engines as well as DBOC pneumatic drills and oyster tumbler when NOISE UNLIMITED had not.
- Dr. Clark believed the DEIS used the VOLPE 2011 report “*A-weighted L₅₀ values*” as a measure of ambient noise, when Tables 4-2 to 4-4 had not.
- Dr. Clark believed the NPS DEIS used “*best available science*” when it did not.
- Dr. Clark was deceived.

The ATKINS peer review summarized Dr. Clark’s findings:

“Clark found the conclusions presented in the DEIS to be reasonable and supported by available data and scientific concepts.”

Dr. Clark believed that the NPS data in the DEIS came from DBOC boats and equipment at Drakes Estero. He told me on March 21, 2012 that he “*assumed*” the data were from “*field measurements at Drakes Estero.*” After learning the true source of the data, and the real sound measurements of DBOC equipment made by ENVIRON, Dr. Clark changed his view. He told me: “*I was led to believe these tables were from field activities of DBOC.*” He told me that he was “*deceived.*”

In the ATKINS review, Dr. Clark wrote that DBOC noise generators “*... have the potential to negatively effect wildlife ...*” After seeing the real data, Dr. Clark changed his conclusion and wrote to me that he does:

“... not believe that these activities have a biologically significant impact

on wildlife ...”

It is plausible, even likely, that Atkins, Resolve, Dr. Clark, the other peer-reviewers, and Dr. Morgenweck were each deceived and did not know that the data in the DEIS was misrepresented. There is nothing available in the public record at this time to suggest otherwise.

When it comes to NPS and VHB employees, however, it is a different story. Some of them knew (or should have known) as they were writing and revising the DEIS that the soundscape impact was based upon false representations of imported data. Some of them knew (or should have known) that the data from the PORE 004 microphone contradicted the DEIS. And some of these same NPS and VHB employees knew (or should have known) when the ATKINS 2012 peer-review report came back that the peer-reviewer thought the data were from DBOC boats and equipment when they were not. Did those NPS and VHB employees remain silent? It appears Dr. Morgenweck was not told, and, like Dr. Clark, was deceived.

Keep in mind that this complaint is based on the limited public record and an earlier draft version of the DEIS. There is a large body of evidence, in the form of drafts, emails, phone records, and other documents, to which the investigators will have access to validate and or dispute these allegations, and all of which should be made public.

If this were simply a case of scientific misconduct, then Section 3.8A (Interior Department Policy) would prevail and these allegations would be adjudicated by the DOI Scientific Integrity Officer. However, even in such a scenario, there are conflicts of interest involving this particular case that mandate that it should be handled by a different agency.

Dr. Morgenweck, Interior’s Scientific Integrity Officer, was involved in commissioning the ATKINS peer-review of the DEIS *“in recognition of high interest in the science.”* Dr. Morgenweck then released the ATKINS peer-review of the DEIS, publicly praising it for accomplishing *“exactly what we were seeking ...”* We now know that the ATKINS report was tainted by the NPS decision to include false representations of data in the DEIS.

The peer-reviewer of the soundscape analysis, Dr. Christopher Clark of Cornell University, was, by his own words, *“deceived.”* Upon seeing the origin of the data he reviewed, and the real data collected at Drakes Estero by ENVIRON, Dr. Clark changed his major conclusion. Section-after-section of his peer review was corrupted by false and deceptive representations.

Dr. Machlis has a different set of conflicts-of-interest. He reports to the NPS Director (Jon Jarvis) who has been involved in issues of disputed science for six years, pre-dating his appointment as Director. For example, the PORE 004 microphone location was selected at a meeting on July 14, 2009. The location of this sound-sensitive area was selected by NPS employees who reported to Mr. Jarvis. Who was at that meeting, why was that location picked, why were data from that microphone withheld, and why were those data then dismissed in the DEIS? The answer to these questions are central to this investigation.

As I wrote to the Secretary on March 26, whomever conducts this investigation is unlikely to know from the outset who in NPS or DOI was involved going back to the July 14, 2009 meeting (and events and communications leading up to it and emerging from it), to the writing and revising of the VOLPE 2011 report, to the writing and revising of the NPS

DEIS. It may involve many people, including people in NPS leadership positions.

The investigation will need to probe the original goals of the VOLPE soundscape analysis and the placement of the PORE 004 microphone, namely, decisions that were made back when Mr. Jarvis was Pacific West Regional Director and Don Neubacher was PRNS Superintendent. How can NPS investigate itself without conflict?

Dr. Machlis has another conflict-of-interest that only came to the fore this past week. The VOLPE 2011 report is a public document, and according to President Obama's open and transparent government policy (January 21, 2009), the DOI Code of Scientific and Scholarly Conduct, and scientific norms, the data used to generate that published report should be publicly available. I requested the VOLPE acoustic data from the lead author of the Department of Transportation study on April 2. One week later she told me that DOT was giving the data to NPS scientists at Fort Collins and that I should contact them.

For nearly a week, NPS Dr. Kurt Fristrup and Damon Joyce were cooperative and collegial, responding to my emails, supplying me with some of the requested data, and providing guidance on interpretation of data and clarification of methods. In short, they adhered to the DOI Code and conducted themselves in a professional manner.

Beginning on Friday April 13, 2012, they abruptly stopped responding to my emails and stopped supplying the requested data – including one outstanding request that I had made from the outset – the actual audio recordings from microphone PORE 004. Multiple emails went unanswered, a pattern quite different from their timely replies prior to the 13th.

After multiple requests went unanswered, on Monday April 16 I wrote to Dr. Machlis, the Science Advisor to NPS Director Jarvis, and the top scientist at NPS, and asked him to help facilitate my data request so I could complete my analysis and submit this complaint. He did not respond. I asked him again on Wednesday April 18.

A day later, on Thursday April 19, Dr. Machlis wrote:

"I have received your emails and review each carefully as it comes in. We are following DOI policies on allegations of scientific misconduct."

Dr. Machlis failed to comment on my data request and gave no assurance that I would receive the requested data (which I have not from NPS). I also asked for assurances that the data relevant to the pending investigation was secured. He did not respond to that inquiry either. Further emails to the Fort Collins scientists also went unanswered for one week.

Finally, on Friday April 20, I was contacted by the branch chief, not the scientists, and told I would have to file a FOIA request to obtain the audio data. My experience with DOI FOIA requests is that FOIA is used as a tool to block access to documents, data, and information, not facilitate it. My last FOIA request to DOI took eight months to process, and the DOI response was completely (and knowingly) non-responsive.

The NPS change of behavior represents an inexplicable double standard. One week the NPS scientists were collegial and sharing data in accord with the DOI Code of Scientific and Scholarly Conduct and the scientific norm. The next week they went silent, contrary to the same Code, and finally told me I must file a FOIA request to obtain the relevant data, data I requested 18 days earlier. All of this hindered and restricted my scientific analysis and the completion of the complaint.

FOIA, as employed at Point Reyes National Seashore and the Pacific West Regional Office since 2007, has been a tool to deny access to information. I certainly hope that Dr. Machlis does not try to explain his conduct by stating that labeling my request a FOIA request and referring it to the Pacific West Region (knowing the data was at Fort Collins) was an attempt to facilitate my request. Such an explanation would be disingenuous.

Dr. Machlis, by all indications, appears to be a participant in the decision to prevent me from obtaining relevant data (audio recordings) from a published study (VOLPE 2011 acoustic study of PRNS), and in so doing, has hindered my scientific analysis of those data. The DOI Code of Scientific and Scholarly Conduct states:

"I will not intentionally hinder the scientific and scholarly activities of others ..."

"I will fully disclose methodologies used, all relevant data ..."

As such, Dr. Machlis is now a subject to be investigated, rather than the investigator. He needs to be asked why data were withheld and why he remained silent when, as the top scientist at NPS, he was asked to help facilitate the data transfer. Why did he ignore the requirements of his DOI Code? Given the numerous reasons set forth in this letter, and the specific conduct of Dr. Machlis concerning access to data, he cannot be the person overseeing an investigation in which he is now a subject. NPS cannot be entrusted to investigate itself.

This case involves false representations and concealment of data – of facts and other information that should have been disclosed. It involves deception. According to Black's Law Dictionary, these are key elements of the definition of fraud:

"An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Any kind of artifice employed by one person to deceive another."

This case goes beyond scientific misconduct and involves fraud. Senator Dianne Feinstein, in her March 29, 2012 letter to Secretary Salazar, wrote:

"It is my belief that the case against Drakes Bay Oyster Company is deceptive and potentially fraudulent."

In a recent story in Greenwire (April 11, 2012) entitled "Battle escalates over allegations of NPS misconduct," Emily Yehle interviewed Jeff Ruch, Executive Director of Public Employees for Environmental Responsibility (PEER). She reported:

To PEER executive director Jeff Ruch, the debate over the noise data is irrelevant. Even if NPS made mistakes in presenting the data -- by not clearly marking the sound levels as estimates -- it falls short of scientific misconduct, he said.

The Park Service has limited funds and limited time. The draft EIS is "good enough for government work," he said.

"It's a minor mistake. It doesn't invalidate the larger product," he said.

"This is a game of academic gotcha that misses the broader point."

If the allegations filed here are correct, then these were not “*minor*” mistakes, and this is not “*academic gotcha*.” Rather, misrepresented noise measurements drove the only two “major” impacts in the DEIS and several of the moderate impacts. These were central data to findings of major impacts presented in this document. Without them, the DEIS would be a different document.

The mistakes were significant, are found throughout Chapters 2, 3, and 4, and represent a clear bias of the authors, and as such, they invalidate the entire product. Such mistakes are not and should not be considered “*good enough for government work*” as Mr. Ruch declared. Surely this cannot be what President Obama intended when he said he wanted to return science to its rightful place, or what Secretary Salazar intended when he released his Department’s Scientific Integrity Policy.

Finally, these misrepresentations were knowingly deceptive. The pattern of evidence reveals that the multiple false representations – the deceptions – were intentional. This is not a matter of employees being over-worked and under-paid, as Mr. Ruch suggested. Many millions of dollars of taxpayer money and untold amounts of staff time were spent on this process over the past six years.

Accountability is required to ask how this happened, and to make certain it never happens again. Left unchecked, the tacit acceptance of such misconduct and deception will be corrosive to the scientific and scholarly culture at NPS and DOI.

As Dr. Morgenweck wrote, this DEIS garnered a “*high interest in the science*.” That is all the more reason why these flagrant false representations of data cannot stand. There are clear NPS policies on how soundscape data should be collected in Management Policies 2006 and Director’s Order #47. The soundscape scientists at Fort Collins follow these policies. Other NPS EIS reports, including recent EIS reports for Yosemite and GGNRA, followed those policies. What is special about the NPS DEIS for Drakes Estero is that it did not. Data were misrepresented. Data were concealed.

Mr. Ruch declared that errors are not misconduct. On that we can agree. The NPS record, however, is clear. These were not simple errors. There was a pattern here – one of compounding misrepresentations and outright deceptions. Many government rules and laws were violated, including the Department of the Interior Scientific Integrity Policy and Code of Scientific and Scholarly Conduct.

The public, peer-reviewer (Dr. Clark), the ATKINS and RESOLVE team, DOI Scientific Integrity office, and likely others within the Department of the Interior were deceived. For example, in the course of his investigation on the NPS secret cameras at Drakes Estero eighteen months ago, DOI Field Solicitor Gavin Frost asked NPS for all of the relevant data, which, at the time, would have included the acoustic recordings from the PORE 004 microphone located adjacent to the secret cameras.

To my knowledge, Mr. Frost was neither told about nor provided the acoustic recording data from the PORE 004 microphone. Frost apparently did not know that the microphone was placed close to the cameras on the shore of Drakes Estero. Frost apparently did not know that the cameras and microphone overlapped during the summer of 2009, and together provided a useful combined dataset (as shown in my accompanying analysis). The March 2011 Frost Report made no mention of the microphone recordings. It appears the DOI Solicitor’s office, like others, was deceived.

The word “deception” is not found in the Interior Scientific Integrity Policy. It is not part of

the definition of scientific misconduct. Rather, it is part of the definition of fraud.

Section 3.8A of the Interior Department Policy states: “*Cases of fraud, waste, and abuse should be directly referred to the Office of Inspector General.*” The allegations contained in this complaint involve fraud and ultimately the abuse and waste of taxpayer money, and therefore warrant referral to the DOI OIG.

In summary, there are three reasons why NPS should not investigate NPS.

- According to Section 3.8A of DOI Policy, allegations of scientific misconduct should be referred to DOI Scientific Integrity Officer (SIO) Dr. Morgenweck. However, this case involves false representations and concealment of data and deception, key elements of the definition of fraud. According to Section 3.8A, cases of fraud are referred to the DOI Inspector General.
- There are also conflicts of interest that mandate that this case should be handled by an agency other than NPS. Those conflicted (as outlined above) include:
 - Dr. Morgenweck, DOI Scientific Integrity Officer and
 - Dr. Machlis, NPS Scientific Integrity Officer.
- Dr. Machlis hindered scientific analysis by failing to provide access to relevant published data, in violation of DOI Code of Scientific and Scholarly Conduct.

Drs. Machlis and Morgenweck, in their April 5, 2012 letter, as a condition of determining whether or not an investigation was warranted, required I prepare and submit detailed information (the five categories in Section 38.A for an official filing with the Department of allegations of misconduct). In the appendix, I provide information for all five categories.

- 1) The name, affiliation, and signature of the person(s) submitting the allegation and the name and organization of the person(s) alleged to have committed the misconduct.
- 2) A description of the allegation that includes the date, circumstances, and location of the alleged misconduct.
- 3) Any documents or other relevant items (such as data, scientific papers, memos, etc.) with annotation showing specifically how the item relates to the allegation.
- 4) An explanation of how the allegation relates to scientific and scholarly misconduct and demonstrating the impact of the alleged misconduct.
- 5) A statement explaining any conflict(s) of interest the person making the allegation has with the subject(s), entity(ies), or situation(s), named in the allegation.

To fully investigate these allegations, as described in the appendix in response to question #4, will involve examining the many emails, correspondence, sets of data, drafts and revisions of documents, final documents, and other analysis. It will also require detailed interviews with me, the DBOC owners, and many NPS, VHB, and DOT employees. Once you have done so, please publicly discuss the statements below.

Together the body of evidence suggests that unnamed NPS and VHB employees who wrote, revised, reviewed, and supervised the NPS DEIS:

- (1) Failed to follow NPS Management Policies 2006 and Director’s Order #47.**
- (2) Made false representations of key data in Chapters 3 of the DEIS.**

- (3) Made false representations of key data in Chapter 4 of the DEIS.**
- (4) Concealed key data in Chapters 3 and 4 that contradicted the DEIS.**
- (5) Drove incorrect findings of major impacts in Chapter 2 of the DEIS.**
- (6) Knowingly deceived the public and peer-reviewers in the DEIS.**

The pattern of misrepresentations throughout the DEIS suggests that this deception was not just done knowingly, but was indeed intentional, fulfilling the definition of fraud.

Concerning the five questions sent to me by Drs. Morgenweck and Machlis, I would ask question #5 (on conflicts of interest) of each of them:

- Can you assure the public that you have no conflicts of interest in this case?
- Can you assure the public that you have always responded in a timely and just fashion to requests for data and information involving this case?
- Can you assure the public that your positions, reporting lines, and involvement with this issue do not significantly impair your objectivity?
- Can you assure the public that your positions and reporting lines do not create an unfair advantage for your superiors or organizations?
- Can you assure the public that your situation does not create the appearance of such conflicts?
- Can you assure the public that your conflicts have not already played a role in your lack of responsiveness to requests for published data?
- Are you capable of finding your colleagues guilty of having violating Management Policies 2006 or Director's Order #47?
- Are you capable of finding your colleagues guilty of having violating the DOI Code of Scientific and Scholarly Conduct?
- Are you capable of finding your colleagues guilty of misconduct and/or fraud if your investigation leads you to that conclusion?
- Can you be unbiased when it comes to people with whom you work?
- Can you be unbiased when it comes to people to whom you report?

If Drs. Morgenweck or Machlis answer no, or fail to respond to any one of these questions, then a conflict or the appearance of a conflict of interest exists and their NPS and DOI offices should not direct, manage, or conduct this investigation.

Under such circumstances, the DOI OIG should undertake this investigation, especially since it includes allegations of deception and fraud. There are abundant reasons why the NPS should not be involved in investigating itself. Moreover, since the DOI and NPS Scientific Integrity Offices and the DOI Solicitor's Office are subjects in this investigation (since all three offices were deceived by false representations and concealed data), it is difficult to see how they can credibly oversee an investigation of their own actions.

As an elected member of the National Academy of Sciences, I listened the morning of April 27, 2009, as President Obama spoke to my fellow NAS members at our annual meeting. It was an historic speech – the first President to address the NAS since

President John Kennedy. President Obama sent a powerful message that morning about the integrity of science. The President said:

“And we have watched as scientific integrity has been undermined and scientific research politicized in an effort to advance predetermined ideological agendas.”

“... we are restoring science to its rightful place.”

“I want to be sure that facts are driving scientific decisions – and not the other way around.”

Section 3.7A of Department Policy (Code of Scientific and Scholarly Conduct) states:

“I will place quality and objectivity of scientific and scholarly activities and reporting of results ahead of personal gain or allegiance to individuals or organizations.”

That Code should be just as true for the officials and scientists who investigate allegations of misconduct as it is for employees who are alleged to have violated it.

The Department of the Interior stated that a goal of its scientific integrity policy is to ensure that DOI *“has a culture of scientific and scholarly integrity that is enduring.”* I wholeheartedly agree with that goal.

To fulfill that goal, please assure the public that your investigation of these allegations will follow the truth no matter where it leads you, no matter who is involved, and no matter how it may conflict with your allegiance to individuals or organizations.

The issues raised in this complaint go beyond science, and go beyond any one individual. They are cultural. Collectively, they represent serial failures to adhere to the President’s and Secretary’s integrity policies. The allegations presented here (see appendix) lead to the realization that the problem with this DEIS is systemic. False representations were made in Chapters 3 and 4. Data were concealed that should have been disclosed in Chapters 3 and 4. The false representations and concealment led to incorrect findings of major environmental impact in Chapter 2. The public and peer reviewers were knowingly deceived.

Given these systemic problems with the DEIS, the allegations presented here should not be investigated and handled as exclusively a personnel (and private) matter. This is a cultural issue that inflicted a process – the writing, revising, and reviewing of the NPS DEIS on Drakes Estero. As I wrote in my letter to Secretary Salazar on March 26, 2012, the Department of the Interior should assure the public that:

- NPS will publicly withdraw their DEIS;
- ATKINS will publicly withdraw their peer-review report; and
- Interior and NPS will cancel the Vanasse Hangen Brustlin contract.

This is not a problem that can be solved by an isolated personnel disciplinary action. This is not a problem that can be solved by a quick fix or scapegoat. The bias – and willingness – to misuse science for a predetermined agenda is pervasive in this DEIS, a document that was seen, touched, and influenced by many people at NPS. This bias also represents a cultural problem that starts with top leaders and managers and spreads throughout the organization. It represents a crisis of leadership.

If you support as do I the President's commitment to scientific integrity, then I urge you to make the kind of major changes in the National Park Service that will assure the public that that these kinds of abuses of science do not occur again. No one employee is responsible for this problem. It involves many people. It is time to look into the soul of the Park Service and ask how to fix this systemic problem so that it never happens again, so that science is returned to its rightful place, and so that NPS employees can be proud of the tremendous work they do to protect our special lands.

I pledge my complete cooperation with this investigation.

Sincerely yours,



Corey S. Goodman, Ph.D.
corey.goodman@me.com
415 663-9495
PO Box 803, Marshall, CA 94940

Enclosures:

- 1) NPS DEIS soundscape deception executive summary.pdf by Corey Goodman, 04/23/12
- 2) NPS DEIS soundscape deception part 1.pdf by Corey Goodman, 04/23/12
- 3) NPS DEIS soundscape deception part 2.pdf by Corey Goodman, 04/23/12
- 4) NPS DEIS soundscape deception part 3.pdf by Corey Goodman, 04/23/12
- 5) NPS DEIS soundscape deception part 4.pdf by Corey Goodman, 04/23/12
- 6) NPS DEIS soundscape deception part 5.pdf by Corey Goodman, 04/23/12
- 7) NPS DEIS soundscape deception part 6.pdf by Corey Goodman, 04/23/12
- 8) NPS DEIS soundscape deception epilogue.pdf by Corey Goodman 04/23/12

cc:

- 1) Ken Salazar, Secretary, DOI
- 2) Laura Davis, Chief of Staff to the Secretary, DOI
- 3) Rachel Jacobson, Acting Assistant Secretary for Fish, Wildlife, & Parks, DOI
- 4) Jon Jarvis, Director, NPS
- 5) Dr. Marcia McNutt, Science Advisor to the Secretary, DOI
- 6) Christine Lehnertz, Regional Director, Pacific West Region, NPS
- 7) Cicely Muldoon, Superintendent, Point Reyes National Seashore, NPS
- 8) John Dupuy, Assistant Inspector General for Investigations, Office of Inspector General, DOI
- 9) Dr. John Holdren, Director, Office of Science and Technology Policy, White House

APPENDIX: Answers to questions #1 to #5.

(1) The name, affiliation, and signature of the person(s) submitting the allegation and the name and organization of the person(s) alleged to have committed the misconduct.

My name is Dr. Corey S. Goodman. My signature is at the end of this document. I am an individual citizen scientist. I have no other affiliation in submitting these allegations to you.

The people alleged to have committed the misconduct and fraud are unnamed employees of NPS and VHB (the contractor for the NPS DEIS). In specific, the unnamed employees are the people who wrote, revised, reviewed, and oversaw the soundscape sections in Chapters 3 and 4 of the DEIS, and the soundscape summary in Chapter 2. The allegations also involve unnamed NPS employees who commissioned the VOLPE study, selected the location for the PORE 004 microphone in July 2009, helped revise drafts of the VOLPE 2011 report, and/or wrote about the VOLPE 2011 report in the NPS DEIS.

The answer to question #1 would end here, except that the identity of my affiliation was raised in a March 27, 2012 letter from Amy Trainer, Executive Director, Environmental Action Committee of West Marin (EAC), to Secretary Salazar and copied to Drs. Morgenweck and Machlis. EAC claimed that I am a “*lobbyist*” and “*vociferous advocate*” on behalf of Drakes Bay Oyster Company (DBOC).

My affiliation was correctly identified in my original submission – individual citizen scientist working from my personal address. For reasons not explained, Drs. Machlis and Morgenweck did not accept my personal address – and personal email – identification below my signature. Additional information, therefore, is provided below.

Throughout my career, I have had many professional affiliations as scientist, professor, educator, entrepreneur, executive, and venture capitalist (a brief resume is included here). Nevertheless, I submitted these allegations to you as an individual citizen scientist separate from any of those affiliations. Those affiliations have shaped my life and provided the scientific experience and wisdom that I bring to this issue. They also provided the scientific credentials and reputation (e.g., elected member of the National Academy of Sciences, professor at UCSF) that I bring to this issue. I am proud of the honors, awards, and memberships that have been bestowed upon me.

My letter to you here, just as all of my letters to Secretary Salazar (or others at DOI and NPS), are on plain white paper without letterhead -- as individual citizen scientist – and signed from my private address and sent from my private email account.

Some have stated publicly that my services as an independent scientist were incorrectly represented and that I am being or have been secretly paid either directly or indirectly by DBOC or someone else on their behalf. I am not and never have been paid, directly or indirectly. Locally it has been a popular rumor. For the record, I state the following: I have received no financial compensation of any kind from anyone in regard to this issue, and have no financial stake in it.

How did I get involved? On April 5, 2007, NPS Superintendent Don Neubacher met with Marin County Supervisor Steve Kinsey. Kinsey reported that Neubacher made “*strong environmental accusations*” against DBOC including overwhelming data of harm to harbor seals, and claimed DBOC “*committed environmental felonies.*”

On April 28, 2007, Supervisor Kinsey, seeking to validate the NPS claims, contacted me based upon my scientific credentials. He knew me at the time as an elected member of the National Academy of Sciences, tenured biology professor at U.C. Berkeley, and someone who had historically gotten involved in science-based public policy issues.

For example, I chaired the National Academy of Sciences’ Board on Life Sciences from 2001 to 2006, and was involved previously, as Kinsey was aware, in science-based issues influencing public policy in Marin County. I certainly was not “pro oyster farm” since in one previous case in which science collided with policy I had publicly disagreed with a Tomales Bay oyster company (and several years later, both State officials and an oyster company owner agreed I had been correct).

Supervisor Kinsey, who questioned the veracity of the NPS scientific claims, asked me to review the NPS claims and NPS-sponsored scientific studies, and to testify at the Marin County hearing on May 8, 2007 as an independent scientist as to whether the NPS data supported the NPS claims.

When I testified at that May 8, 2007 Marin County hearing, I had not met Kevin Lunny, owner of DBOC. I came to the hearing at the invitation of Supervisor Kinsey, and I testified on behalf of truth and scientific integrity. Today those principles continue to guide my involvement just as they did on May 8, 2007.

At that hearing, I testified that NPS officials and scientists misrepresented their own data. My analysis showed that NPS data did not support NPS claims. I testified:

“... public policy decisions can and should be informed by quality science. But this must be science conducted rigorously, without agendas or conflicts-of-interest. The political process can be dangerously misled by bad or misused science. One of my greatest concerns when I see science being invoked in public policy debates is to make sure that it is good science and not pseudo-science or -- even worse -- a blatant misuse of science.”

I cautioned:

“My only hesitation in coming forward to testify today is the realization that openly expressing my views as a scientist may cause me to come under personal attack by local groups that are determined to remove Lunny’s operation from the PRNS. Nevertheless I feel compelled to speak out for good science instructing public policy.”

Those words of caution continue to resonate today, as I comment on below.

I continue to advise Supervisor Kinsey and others today as I have over the intervening six years but I do not work for nor am I affiliated with Marin County government. Similarly, I provide advice to other agencies and elected officials, and was invited to present a keynote talk on this topic on October 16, 2010 to the

California Council on Science and Technology (of which I am an appointed member), all as a world-renowned and independent scientist.

The analysis I presented on May 8, 2007 to the Marin County Board of Supervisors was validated two years later on May 5, 2009 when the National Academy of Sciences concluded:

“The National Park Service report “Drakes Estero: A Sheltered Wilderness Estuary” in some instances selectively presented, overinterpreted, or misrepresented the available scientific information on DBOC operations by exaggerating the negative and overlooking potentially beneficial effects.”

The NAS found NPS misrepresented NPS data in every category of environmental harm including harbor seals. NAS concluded:

“... there is a lack of strong scientific evidence that shellfish farming has major adverse ecological effects on Drakes Estero”

Two years later, and at considerable taxpayer expense, the NAS arrived at essentially the same conclusions as I had on May 8, 2007.

As an elected member of the NAS, I listened the morning of April 27, 2009, as President Obama spoke to my fellow NAS members at our annual meeting. It was a historic speech – the first President to address the NAS since President John Kennedy. President Obama sent a powerful message that morning about the integrity of science.

Policy, the President told us, would be driven by good science, not false science being driven by predetermined agendas. The country’s top scientists gave him a standing ovation. I was moved by Obama’s words that day – as I am today. I continue to speak out on behalf of scientific integrity. I continue to be motivated by the principles articulated by the President.

My affiliation is as an independent citizen scientist seeking to restore science to its rightful place. I continue to speak out on behalf of scientific integrity as I did in my keynote talk on October 16, 2010 to the CCST.

The Environmental Action Committee of West Marin (EAC) opposes continuation of DBOC, and has over the past six years put its name on numerous statements and documents that repeated the NPS false science claims. On March 27, 2012, Amy Trainer, EAC Executive Director, wrote a ten-page letter to Secretary Salazar. It should be noted that her letter was submitted the day after I submitted Part 1 of these misconduct and deception allegations to Secretary Salazar on March 26. EAC challenged my “independent” affiliation, an issue raised in the Machlis and Morgenweck letter to me, when she wrote:

“Rather, he claims, his only concern is NPS’s use of science. Yet, Dr. Goodman himself is hardly neutral and is a vociferous advocate on behalf of DBOC. He is on record as lobbying for the continuation of oyster operations, which would require overturning long-standing law and policy.”⁴²

The EAC letter provided a single citation (#42) to justify the “lobbyist” and “vociferous advocate” claim. Citation #42 stated:

⁴² 11/18/09 corr. from Dr. Goodman to Marin County Planning Commission: “We request that you ... support the protection of ... mariculture operations ... in the national park.”

That citation puzzled me, since I did not remember ever writing to the Marin County Planning Commission, and did not remember ever writing that sentence (full of ellipses as it was). I searched my computer but found no such document. I then searched the Marin County Planning Commission web site, and found a document on 11/18/09 with my name on it.

It was a letter written to the Planning Commission by my wife (Dr. Marcia Barinaga), signed by my wife, and sent from my wife’s computer. I had not seen the letter before. I readily acknowledge that I agree with her and am proud of her for writing it, but it is her letter and her writing.

My wife’s letter addressed a public health and safety issue – public access (i.e., trails) across private ranch lands with livestock. As the manager of a working ranch, she wrote about risks to livestock of leaving gates open, risks to hikers from livestock, risk to their dogs (from protection dogs), risks to biosecurity (i.e., contamination of livestock with pathogens), and finally, the threat to the integrity of organic farms and ranches by the introduction of invasive species from neighboring lands.

It was a thoughtful public policy letter. My wife and I own a ranch named, appropriately, after her family – Barinaga Ranch – and her occupation is rancher and cheese maker. She has a Ph.D. in molecular biology and understands the issues of biosecurity. Our ranch is organic and animal welfare certified. She takes great pride in her operation. In her letter, she addressed the pitfalls, problems, and risks from placing trail access across private ranch land.

My name appeared on my wife’s letter simply because I co-own the ranch with her, and the letterhead says “Marcia Barinaga, Corey Goodman, Barinaga Ranch.” I didn’t write or sign the letter, and I did not communicate it.

EAC elevated my wife’s letter about public health and safety issues related to public access to ranches, twisted its meaning, and assigned it to me to somehow justify her accusation that my allegations were those of a “*lobbyist*” and “*vociferous advocate*” of the DBOC oyster farm.

EAC’s quote also selectively omitted words from my wife’s statement. The sentence EAC quoted with all the ellipses actually stated: “*Support the protection of agriculture and mariculture operations on private property and in the national park.*” The full sentence took on a different meaning than the way EAC quoted it with key words omitted.

My wife’s letter was written after discussions with other ranchers, briefings from the Marin County Farm Bureau, and her own review of the Planning Commission proposal. If my wife is a lobbyist for communicating on a public policy issue before the Planning Commission, then EAC is also a lobbyist for submitting comments to the National Park Service on the pending DEIS, and by EAC’s logic, so are the tens of thousands of citizens who also commented on the DEIS. They are all lobbyists, including all the people who clicked and sent the pre-written form letters supporting NPS.

In the five years since Supervisor Kinsey asked for my assistance, my wife's November 2009 letter was the single example cited by EAC to misrepresent my involvement in this matter. It is time to reject such incorrect statements. I am involved as an independent citizen scientist, and have been since Supervisor Kinsey called me in April 2007.

The rest of the EAC letter is similarly full of distorted quotes and statements. If for any reason you do anything other than ignore her letter, then I ask you to please contact me for a detailed interview, to obtain appropriate documents, and to conduct your own due diligence.

Below is a brief resume (full resume available upon request).

Dr. Goodman is a renowned scientist, entrepreneur, educator, CEO, and corporate executive. He is currently Managing Partner and Co-founder of venBio LLC, a biotech venture capital firm. He was formerly President of Pfizer's Biotherapeutics and Bioinnovation Center, and a member of Pfizer's Executive Leadership Team. Dr. Goodman was a co-founder of Exelixis, Renovis, Second Genome, and Ossianix, and CEO of Renovis until its acquisition by Evotec. He is a former professor at Stanford University and UC Berkeley, co-founder of Berkeley's Wills Neuroscience Institute, an Investigator with the Howard Hughes Medical Institute, and currently an Adjunct Professor at UC San Francisco. During his 25-year academic career, he published over 200 scientific papers. Dr. Goodman is an elected member of the U.S. National Academy of Sciences, the American Academy of Arts and Sciences, and the American Philosophical Society. His honors include, amongst others, the Alan T. Waterman Award from the National Science Board, Canada Gairdner Biomedical Award, March-of-Dimes Prize in Developmental Biology, Reeve-Irvine Research Medal, and Trinity College Dublin Dawson Prize in Genetics. He is on the Board of the California Council on Science and Technology, the Pacific Institute, and former chair of the National Academy of Sciences' Board on Life Sciences. He is an advisor to several university innovation centers and disease foundations. He is Chair of the Board of several companies, including Oligasis, Ossianix, and Second Genome, and a member of the Board of several others, including NeuroTherapeutics and Mirna. He is also co-owner of Barinaga Ranch.

2) A description of the allegation that includes the date, circumstances, and location of the alleged misconduct.

Together the body of evidence suggests that unnamed NPS and VHB employees who wrote, revised, reviewed, and supervised the NPS DEIS:

- (1) Failed to follow NPS Management Policies 2006 and Director's Order #47.
- (2) Made false representations of key acoustic data in Chapter 3 of the DEIS.
- (3) Made false representations of key acoustic data in Chapter 4 of the DEIS.
- (4) Concealed key acoustic data in Chapters 3 and 4 that contradicted DEIS.
- (5) Drove incorrect findings of major impacts in Chapter 2 of the DEIS.
- (6) Knowingly deceived the public and peer-reviewers in the DEIS.

Compounding these allegations, over the past few weeks, my analysis of the NPS soundscape data was hindered by NPS employees, including Dr. Machlis, who did not adhere to the DOI Code of Scientific and Scholarly Conduct by hindering and restricting access to already published and highly relevant acoustic data.

Each false representation of data in the DEIS supports the contention that the DEIS has a bias – a bias by writers intent on finding major impacts of environmental harm by Drakes Bay Oyster Company.

Data and metrics were distorted, invented, falsely represented, overestimated, underestimated, and exaggerated, and the real data concealed, all with the result of showing that DBOC boats and equipment could be heard for miles, when in reality they could not.

Tables and legends were changed from one version of the DEIS to the next not with the normal result of improving clarity and consistency, but rather with the end result of further deceiving the reader. In so doing, the DEIS became more confusing and internally inconsistent.

It is difficult to examine this record of false representations and suppression of data without coming to the conclusion that these actions were knowingly undertaken. The public and peer-reviewers were knowingly deceived – that deception appears to have been intentional.

Here is a summary of the allegations from each of the six parts of this complaint:

(1) Failed to follow NPS Management Policies 2006 and Director's Order #47.

NPS and/or VHB employees who wrote, revised, or reviewed the DEIS:

- a) Cited Director's Order #47 and Management Policies 2006 as basis for soundscape analysis.
- b) Were directed by these policies to identify noise-generating human activities, measure human-generated sounds, & measure baseline conditions.
- c) Failed to measure DBOC noise generators and misrepresented ambient baseline conditions.
- d) Produced soundscape analysis in DEIS that is different from other NPS EIS reports in that it did not measure human-generated sounds and did not follow NPS policies.

(2) Made false representations of key acoustic data in Chapters 3 of the DEIS.

NPS and/or VHB employees who wrote, revised, or reviewed the DEIS:

- a) Made false representations of acoustic data in Table 3-3 and text.
- b) Used measurements from NOISE UNLIMITED 1995 report for the New Jersey State Police to falsely represent and overestimate DBOC oyster boats in Drakes Estero.
- c) Used measurements from Federal Highway Administration Construction User's Guide 2006 to falsely represent and overestimate DBOC oyster equipment at Drakes Estero.
- d) Exaggerated noise generated by DBOC boats and equipment.

(3) Made false representations of key acoustic data in Chapter 4 of the DEIS.

NPS and/or VHB employees who wrote, revised, or reviewed the DEIS:

- a) Cited VOLPE 2011 report for ambient noise levels but used measurement not found in conclusions of VOLPE report.
- b) Used false representations of ambient data in Table 4-2, 4-3, and 4-4.
- c) Used “*lowest daily ambient level*” instead of standard L_{Aeq} or L_{50} measurements to represent ambient in Tables 4-2 to 4-4, leading to underestimate of ambient level.
- d) Exaggerated that DBOC equipment could be heard up to 3.3 miles from source, when actual measurements (ENVIRON 2011 report) revealed the sounds dissipate in hundreds of feet.

(4) Concealed key acoustic data in Chapters 3 and 4 that contradicted DEIS.

NPS and/or VHB employees who wrote, revised, or reviewed the DEIS:

- a) Knew or should have known that the PORE 004 microphone should have recorded daily DBOC boat trips and equipment if the numbers in Tables 3-3, 4-2, 4-3, & 4-4 were correct.
- b) Claimed that the bluff might have blocked the sound path from boat to microphone, when Google earth elevation profiles show this is incorrect.
- c) Knew or should have known that the microphone had not recorded daily DBOC boat trips and equipment, showing the numbers in Tables 3-3, 4-2, 4-3, & 4-4 were incorrect.
- d) Concealed key data that contradicted their conclusions in the NPS DEIS.

(5) Drove incorrect findings of major impacts in Chapter 2 of the DEIS.

NPS and/or VHB employees who wrote, revised, or reviewed the DEIS:

- a) Identified 14 areas of potential environmental impact in Chapter 2 of DEIS.
- b) Found two areas of “major” impact including soundscape and wilderness sections.
- c) Used false representations of noise data to drive one finding of major impact (soundscape) and contribute to second (wilderness).
- d) Without false representation of soundscape data, major impacts in DEIS would disappear and change, and this NPS DEIS would become a very different document.

(6) Knowingly deceived the public and peer-reviewers in the DEIS.

NPS and/or VHB employees who wrote, revised, or reviewed the DEIS:

- a) Deceived public and peer reviewers to believe measurements in Table 3-3 came from DBOC boats and equipment.

- b) Deceived public and peer reviewers to believe ambient measurements in Tables 4-2 to 4-4 came from VOLPE 2011 report and were normal metric.
- c) Deceived public and peer reviewers to believe DBOC boats and equipment heard for miles and disturbing wildlife.
- d) Changed tables and legends from one version of the DEIS to the next not with the normal result of improving clarity and consistency, but rather with the end result of further deceiving the reader. In so doing, the DEIS became more confusing and internally inconsistent.

3) Any documents or other relevant items (such as data, scientific papers, memos, etc.) with annotation showing specifically how the item relates to the allegation.

Please see the following data, documents, drafts, emails, and correspondence. Some of them are contained here or are in the public domain. Other emails, correspondence, drafts, documents, and testimony are not publicly available and should be secured by the investigators.

- (1) NOISE UNLIMITED 1995 report November 1995
- (2) FHWA (Federal Highway Administration) 2006 report January 2006
- (3) Emails, notes, and minutes before, during, and after the July 14, 2009 meeting to select PORE 004 microphone location for the VOLPE 2011 report, including a list of who participated in meeting July 2009
- (4) Drafts and revisions of the VOLPE 2011 report
- (5) Emails and correspondence to and from NPS employees and DOT, FAA, or Volpe employees concerning the VOLPE 2011 report
- (6) Acoustic recordings, measurements, and spectrograms from PORE 004 microphone for VOLPE 2011 report
- (7) VOLPE 2011 report March 2011
- (8) Emails, correspondence, transcripts of interviews of interactions between DOI Field Solicitor Gavin Frost and NPS employees involving his request for all data and their reply to his request
- (9) NPS DEIS on Drakes Estero, non-public version June 2011
- (10) Further drafts and revisions of NPS DEIS
- (11) Emails, correspondence, and documents to and from NPS employees concerning the writing, revising, and reviewing of the NPS DEIS
- (12) NPS DEIS on Drakes Estero, public version September 2011
- (13) Emails and correspondence between DOI and NPS employees and Dr. Tim Ragen (MMC) concerning soundscape and noise measurements of DBOC boats

- (14) ENVIRON 2011 report December 2011
- (15) Emails, correspondence, and documents to and from NPS employees, VHB employees, and ATKINS team, RESOLVE team, and the soundscape peer-reviewer Dr. Christopher Clark concerning the soundscape analysis
- (16) ATKINS 2012 peer-review report March 2012
- (17) Goodman letter to Salazar, Part 1 03/26/12
- (18) Goodman PDF supporting letter to Salazar 03/26/12
- (19) Emails and correspondence to and from NPS employees and Amy Trainer (EAC)
- (20) Trainer EAC letter to Salazar 03/27/12
- (21) Trainer EAC letter to Morgenweck 04/02/12
- (22) Machlis and Morgenweck letter to Goodman 04/06/12
- (23) Emails, correspondence, and phone records to and from Dr. Kurt Fristrup, Damon Joyce, other NPS Fort Collins employees, Dr. Gary Machlis, and other DOI and NPS employees during April 2012 concerning Dr. Goodman's request for acoustic data from PORE 004 microphone and the decision to stop responding to Dr. Goodman and to stop providing the requested acoustic data April 2012
- (24) Goodman letter to Kendall, Morgenweck, Machlis 04/23/12
(this letter)
- (25) NPS DEIS soundscape deception executive summary.pdf by Corey Goodman, 04/23/12
- (26) NPS DEIS soundscape deception part 1.pdf by Corey Goodman, 04/23/12
- (27) NPS DEIS soundscape deception part 2.pdf by Corey Goodman, 04/23/12
- (28) NPS DEIS soundscape deception part 3.pdf by Corey Goodman, 04/23/12
- (29) NPS DEIS soundscape deception part 4.pdf by Corey Goodman, 04/23/12
- (30) NPS DEIS soundscape deception part 5.pdf by Corey Goodman, 04/23/12
- (31) NPS DEIS soundscape deception part 6.pdf by Corey Goodman, 04/23/12
- (32) NPS DEIS soundscape deception epilogue.pdf by Corey Goodman 04/23/12
- (33) Any other unnamed reports, data, or documents relating to this complaint or to any of the above

4) An explanation of how the allegation relates to scientific and scholarly misconduct and demonstrating the impact of the alleged misconduct.

As described in this letter, these allegations relate to scientific and scholarly misconduct, to false representations of data, to concealment of data, to deception,

to knowingly engaging deception, to intentional deception, and potentially to fraud.

The allegations in this complaint (Parts 1-3) are limited to the soundscape analysis in the DEIS – arguably among the most important, if not the most important, data in the entire document. Some (e.g., Jeff Ruch, Executive Director of Public Employees for Environmental Responsibility) have publicly stated that this is a “*minor*” issue. Not so. NPS conclusions of environmental harm to harbor seals and other wildlife by noise impacts and violations of NPS noise standards are a central theme throughout the EIS.

One of the major purposes of this DEIS report was to evaluate potential environmental impacts of various alternative actions. This DEIS identified fourteen areas of potential impact, and found two with “major” impact, seven with moderate impact, four with minor impact, and one with beneficial impact.

The false representations of noise data in Chapters 3 and 4 of the DEIS were responsible for one of the two findings of major impact (soundscape), contributed significantly to the other finding of major impact (wilderness), and contributed to several findings of moderate impact (birds, harbor seals, and visitor experience) in the DEIS. Without these false data, the only two major impacts disappear or change considerably and the DEIS becomes a different document – one lacking any major environmental impacts.

(5) A statement explaining any conflict(s) of interest the person making the allegation has with the subject(s), entity(ies), or situation(s), named in the allegation.

I have no conflicts of interest concerning the subjects, entities, or situations named in these allegations.

Concerning the subjects, they are unnamed in my allegations. I do not personally know any of the people who are named in the NPS DEIS as having written, revised, reviewed, or overseen the preparation of the DEIS.

The single exception may be NPS Point Reyes National Seashore Superintendent Cicely Muldoon, whom I met only once, on June 7, 2010, but I have no knowledge of the level of her involvement in these matters. I have no knowledge of her role in any aspect of the soundscape analysis. To the best of my knowledge, I know no one at, and nothing about, VHB, other than they functioned as the outside contractor for this DEIS.

Concerning the entities, I have no conflict of interest concerning either NPS or DBOC. I have no personal, professional, or financial interest or conflict with either one of them. As I told Kevin Lunny the first day I met him in May 2007 (a week after the May 8, 2007 Marin County hearing), my focus is on truth and scientific integrity, and I call it as I see it. I am data-driven and fact-based, and, like President Obama, would like to see good science informing policy rather than predetermined agendas driving bad science. I told Mr. Lunny then, and I’ve repeated to him since, that if I find data showing that his oyster farm causes major harm to the environment, I will say so.

Concerning the situation, I have no conflict concerning soundscape analysis of

DBOC boats or equipment. I was scientifically critical of other sections of the DEIS in October, and gave a public presentation on my analysis. I stand by that scientific analysis (available upon request). At the time, I said nothing about the soundscape data in the DEIS. I began analyzing the DEIS soundscape data after reading the ENVIRON report in December 2011. I was struck by the dramatic differences between the ENVIRON numbers and the DEIS numbers. Only when I began reading the references several months later did I realize that the data cited in the DEIS did not come from Drakes Estero, but rather came from far away and long ago. I became more interested in the soundscape data after reading the ATKINS 2012 peer-review report.

The allegations I submitted here arose from my independent analysis of the DEIS soundscape data, the documents cited for that data (NOISE UNLIMITED 1995; FHWA 2006; VOLPE 2011), and the peer-review of those data (ATKINS 2012).

I have no financial conflict of interest. I have no financial interest with any party or outcome concerning these allegations.

I have no professional conflict of interest. My professional life as biotech entrepreneur and investor is separate from these allegations, and my affiliation is as an independent citizen scientist.

I have no personal conflict of interest. I do not know the unnamed subjects involved in these allegations.

As a biologist, I am an environmentalist and supporter of wilderness and biodiversity. I believe that environmental policy must be informed by good science, rather than bad science being driven by predetermined political agendas. That principle has guided my analysis, and the filing of these allegations.

I have no conflict of interest that would “significantly impair objectivity.”

There is no one I work for or report to or depend upon that is pressuring me or biasing the outcome of my analysis. My analysis is independent, and done in the best spirit of scientific and scholarly inquiry.

**APPENDIX: Response to April 2, 2012 letter from Amy Trainer to Dr. Morgenweck
(this is supplemented by the appendix at the end of:
“NPS DEIS soundscape deception part 2.pdf”)**

On March 26, 2012, I submitted a scientific misconduct complaint to Secretary Salazar alleging false representations of data and deception by National Park Service (NPS) and Vanasse Hangen Brustlin (VHB, the contractor NPS tasked with the preparation of the draft Environmental Impact Statement or DEIS) employees who wrote, revised, and reviewed the NPS DEIS on Drakes Estero.

Ms. Amy Trainer, Executive Director, Environmental Action Committee of West Marin (EAC), wrote to Dr. Morgenweck (Department of the Interior Scientific Integrity Officer) on April 2, 2012 that these allegations are “*bogus*,” “*baseless*,” “*unscientific*,” and “*unfounded*.” This appendix is in response to the EAC letter to Dr. Morgenweck. A PDF document is attached here that supplements this appendix letter.

A series of questions need to be asked of NPS during this investigation.

- (1) Does NPS agree with the statements contained in the EAC letter?
- (2) Does the EAC response effectively represent the NPS response to these allegations?
- (3) Did NPS or VHB employees provide information cited in the EAC letter?
- (4) Did NPS or VHB employees provide information to EAC not available in the DEIS or to the public?

The EAC claimed that NPS did not cite the Kawasaki Jet Ski at 71 dBA in Table 3-3 (the only one of the nine boats with a measurement of 71 dBA). Instead, EAC wrote, NPS cited a New Jersey State Police patrol boat with a 175 HP 2-stroke V6 engine.

- (1) How does a police patrol boat with a 175 HP 2-stroke V6 engine better represent the oyster boat with a 20 HP 4-stroke engine?
- (2) How is this not inappropriate and deceptive?
- (3) What is the source of their information?
- (4) Did NPS or VHB employees inform EAC that a police patrol boat with a 175 HP V6 engine and not a Jet Ski was selected as representative of the DBOC boat in the DEIS?

The patrol boat with a 175 HP V6 engine had a noise level of 81 dBA. EAC wrote that NPS “*chose conservatively*” to represent the oyster boat at 71 dBA.

- (1) Using what formula was a measurement of 81 dBA converted to 71 dBA?
- (2) Where was this conversion disclosed in the DEIS?
- (3) What conversion formula from the literature was used?
- (4) If NPS had never measured the DBOC 20 HP engine, then how did NPS know how to convert noise from a 175 HP 2-stroke V6 engine measure in 1995 to unknown noise from a 20 HP 4-stroke engine in 2011 in Drakes Estero?
- (5) Did any NPS or VHB employee provide this information to EAC?

EAC wrote that “*these representative values are reasonable, understate the actual DBOC noise level impacts, and directly contradict Dr. Goodman and Senator Feinstein’s unfounded allegations of NPS misconduct.*”

- (1) How are noise values from a New Jersey State Police patrol boat with a 175 HP 2-stroke V6 engine in 1995 “reasonable” representative values for an oyster boat with a 20 HP 4-stroke engine in 2011?
- (2) How does an arbitrary conversion from 81 dBA to 71 dBA follow “*best available science*”?
- (3) How does this assertion in any way contradict the allegation that this false representation was a false representation and knowingly deceptive?

EAC also wrote that the NPS picked either the concrete mixer truck (typically with a 400 HP diesel engine) at 79 dBA or “*all other equipment*” at 85 dBA from the FHWA 2006 report to represent the DBOC oyster tumbler with a ¼ HP, 12-volt electric motor.

- (1) Using what formula was a measurement of 85 dBA converted to 79 dBA?
- (2) Where was this conversion disclosed in the DEIS?
- (3) What conversion formula from the literature was used?
- (4) If NPS did not measure the DBOC oyster tumbler, then how did they know how to convert noise from a concrete mixing truck (typically with a 400 HP diesel engine) or “*all other equipment*” to unknown noise from a ¼ HP, 12-volt electric motor?
- (5) Did any NPS or VHB employee provide this information to EAC?
- (6) How does the EAC explanation represent “*best available science*”?

To represent the oyster tumbler in Table 3-3 in the DEIS, EAC claimed that NPS likely picked “*all other equipment.*” In Table 1 in the FHWA 2006 report, “*all other equipment*” is shown to have a number of “*actual data samples*” as zero. The oyster tumbler has a ¼ HP motor, while “*all other equipment*” are listed as “*> 5 HP.*”

- (1) How was picking a category with zero data samples considered appropriate?
- (2) How was picking a category with equipment > 5 HP considered appropriate?
- (3) Does this represent “*best available science*”?
- (4) How would NPS have converted from an unknown like “*all other equipment*” to an oyster tumbler that they had never measured?
- (5) What scientific formula was used to reduce 85 dBA to 79 dBA?
- (6) Did any NPS or VHB employee provide this information to EAC?
- (7) Does NPS concur and agree with this explanation?

It would have been easy for NPS to measure DBOC boats and equipment. ENVIRON (2011 report) did so.

- (1) Did NPS measure the noise levels of the DBOC boats and equipment?
- (2) Did NPS encourage others to measure the noise levels of DBOC boats and equipment?
- (3) Did NPS direct that harbor seal observers take or obtain sound recordings or

measurements?

- (4) Did NPS have access to those data?
- (5) Did NPS analyze recordings of noise levels of DBOC boats and equipment?
- (6) If yes, where are the data and analyses?
- (7) If not, why didn't NPS make such measurements?

NPS Management Policy 2006 and Director's Order #47 directed park managers to collect appropriate data on both the ambient noise level and noise generated by human activities. This NPS DEIS quoted from these two documents extensively in defining the NPS mission in preservation of natural soundscapes. The DEIS said that noise from DBOC operations (e.g., motorized boats and pneumatic drills) were identified as potential impacts during the public scoping process. If so, then why didn't the NPS managers collect the appropriate data according to, and as required by, NPS Management Policy?

Concerning the monitoring of "*noise-generating human activities*" emanating from the oyster farm, the NPS appears to have failed to follow NPS Management Policies 2006 and Director's Order #47. No data from DBOC in Drakes Estero were presented in the NPS DEIS. Instead, irrelevant data from loud, fast boats or highway construction equipment were substituted for DBOC data, and the public was deceived into thinking that the data came from DBOC.

In summary, the letter from EAC to Dr. Morgenweck presented a series of alternative explanations concerning my allegations regarding false representations and deception in the NPS DEIS. The OIG, DOI, and NPS should ask whether these explanations are supported by data, documentation, and evidence, and whether they impact the allegations in any meaningful way. Does NPS agree with these explanations? If not, does NPS have a better explanation? Is the EAC letter based on information and data not publicly available?