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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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LAWRENCE J. BRADY
STAFF DIRECTOR

October 20, 2011

The Honorable Kenneth L. Salazar
Secretary of the Interior
1849 C Street NW, Mail Stop 7329
Washington, DC 20240

Dear Mr. Secretary:

It has come to my attention that scientific misconduct by National Park Service (NPS) personnel may be jeopardizing the right of a small business to operate in Marin County, California. Since 2007, the NPS has been advocating that the Drakes Bay Oyster Company (DBOC) cease operations at Point Reyes National Seashore because – according to NPS – the oyster farm is harming the local harbor seal population. Allegations that NPS knowingly relied on flawed science to support that conclusion as part of an effort to remove DBOC have come from a wide range of stakeholders and disinterested parties.¹ If true, the NPS, a bureau of the Department of the Interior (DOI), will have closed the doors of a family-owned small business without a valid scientific basis.

The Lunny family bought the oyster farm in 2005, subject to a reservation of use clause set to expire in 2012.² Their reservation of use – the provisions which have allowed the family to remain on the land after the previous owner sold it to NPS in 1972 – can be extended at your discretion.³ With that in mind, it is imperative that the information you receive from the NPS to make that decision is reliable and unbiased. I am concerned it is not.

Shortly after the Lunny family purchased the oyster farm, NPS scientists claimed DBOC mariculture activities were significantly harming the harbor seal population in Drakes Estero, a

¹ See, e.g., Felicity Barringer, *A Park, an Oyster Farm and Science*, N.Y. TIMES, Mar. 24, 2011, <http://green.blogs.nytimes.com/2011/03/24/a-park-an-oyster-farm-and-science/#more-96457>.

² *Shellfish Mariculture in Drakes Estero, Point Reyes National Seashore, California* Committee on Best Practices for Shellfish Mariculture and the Effects of Commercial Activities in Drakes Estero, Pt. Reyes National Seashore, California; Ocean Studies Board, Division of Earth and Life Studies, Nat'l Research Council of the Nat'l Academies, May 5, 2009, at 3, available at http://www.nap.edu/catalog.php?record_id=12667 [hereinafter NAS Committee Report].

³ NPS, Draft Environmental Impact Statement for the Drakes Bay Oyster Company Special Use Permit, Point Reyes National Seashore, Calif. (Sept. 2011).

Marin County estuary.⁴ The Marin County Board of Supervisors held a hearing on May 5, 2007 to examine DBOC's impact on the local harbor seals. According to witnesses present at the hearing that have spoken with my staff, NPS representatives misrepresented scientific data and made unsupported allegations against DBOC to justify the removal of the farm.

A subsequent examination by the National Academy of Science's (NAS) National Research Council found that NPS "selectively present[ed] harbor seal survey data in Drakes Estero and over-interpret[ed] the disturbance data which are incomplete and non-representative of the full spectrum of disturbance activities in the estero."⁵ NAS also suggested a detailed camera record would help resolve the controversy.⁶ Unbeknownst to the NAS panel, the NPS had maintained a secret camera system in Drakes Estero since 2007.⁷ This camera system took minute-by-minute pictures during the pupping season in an attempt to capture photographs of DBOC workers disturbing the harbor seals.⁸ NPS failed to disclose these photos and logs for three years, even in response to FOIA requests.⁹ NPS's failure to disclose, or even acknowledge, the existence of potentially exculpatory data captured by the cameras creates the appearance of a cover-up.

In fact, the NPS Solicitor's Office addressed the data collected by the hidden camera in a March 2011 report (the "Frost Report") intended to examine allegations of scientific misconduct reported to the DOI Office of Inspector General.¹⁰ According to the Frost Report, the photos show no evidence that DBOC harmed the harbor seals.¹¹ Additionally, the report found that, "Even without the photos and accompanying logs, the research record accurately represents their content (i.e., no DBOC-caused disturbances) for most of 2007 and 2008, and for all of 2009 and 2010."¹²

Despite finding apparently exculpatory evidence with respect to DBOC's alleged harm upon the harbor seal population, NPS continues to advocate for the removal of the oyster farm. NPS maintains this position despite the fact that an internal investigation found several individuals within NPS violated the NPS code of scientific conduct.¹³

⁴ NAS Committee Report at 3; Marin County Board of Supervisors Hearing, May 8, 2007, video available at <http://www.co.marin.ca.us/depts/BS/Archive/Meetings.cfm> (last accessed Sept. 13, 2011).

⁵ NAS Committee Report at 3.

⁶ *Id.* at 46-47.

⁷ See Memo from Gavin M. Frost, Attorney-Advisor, to Will Shafroth, Acting Assistant Secretary for Fish and Wildlife and Parks at 4 (Mar. 22, 2011) [hereinafter Frost Report].

⁸ Frost Report at 18. "V1's mission was to identify digital photos showing DBOC boats present in Drakes Estero on Sundays in 2008;" *Id.* at 21. Volunteers "strict[ly] confined attention to DBOC mariculture activities, disturbances, and potential disturbances of harbor seals in upper Drakes Estero."

⁹ *Id.* at 22-23, 30. NPS did mention the cameras in a May 1, 2009 briefing paper (NAS Briefing Paper at 1, 2, Appendix A.) The paper was finalized the day before NAS's May 2009 report was publicly distributed (Frost Report at 18-19). However, the NPS staff failed to deliver the briefing paper to any NAS committee members, and as a result, the data referred to in the paper remained unavailable to the public.

¹⁰ *See id.*

¹¹ *See id.* at 22-23, 28.

¹² *Id.* at 28.

¹³ *See id.* at 35.

In this matter, the alleged misconduct is serious, and it could result in the loss of the Lunny family's business, which employs a number of local residents. Time is of the essence, as the family's reservation of use expires next year. In light of a damaging draft Environmental Impact Statement (EIS) released by NPS on September 23, 2011,¹⁴ it is imperative that a thorough, objective review of whether NPS's conclusions are based on flawed science occur immediately.

To assist the Committee's investigation of this matter, please provide the following documents and information as soon as possible, but by no later than November 4, 2011 at noon:

1. All correspondence to or from Gavin Frost regarding the Frost Report.
2. All interview notes or transcripts compiled by Gavin Frost during the course of his investigation.
3. All draft versions of the Frost Report.
4. All photographs and corresponding analyses, in any form, captured by the NPS cameras hidden at Drakes Estero from January 1, 2007 – December 31, 2010.
5. All draft versions of the Environmental Impact Statement released on September 23, 2011.
6. All communications, including email and memoranda, to or from DOI employees regarding or relating to the Drakes Bay Oyster Company.

Additionally, please make the following DOI employees available for transcribed interviews beginning the week of November 7, 2011:

1. Gavin Frost, Solicitor's Office
2. Jonathon Jarvis, NPS Director
3. Don Neubacher, Former Superintendent, Point Reyes National Seashore
4. Dr. Marcia McNutt, Science Advisor to the Office of the Secretary
5. Dr. Sarah Allen, NPS Scientist
6. Dr. Ben Becker, NPS Scientist
7. Cicely Muldoon, Superintendent, Point Reyes National Seashore

¹⁴ See *supra* note 2.

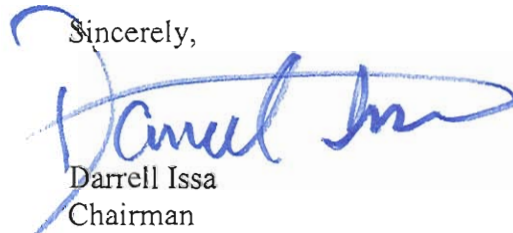
The Honorable Kenneth L. Salazar
October 20, 2011
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The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions about these requests, please contact Jean Humbrecht or Jonathan Skladany of the Committee staff at (202) 225-5074. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", is written over a light blue horizontal line. The signature is fluid and cursive.

Darrell Issa
Chairman

Attachment

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

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Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.