

Drakes Bay Oyster Company

17171 Sir Francis Drake Boulevard

Inverness, CA 94937

(415) 669-1149

kevin@drakesbayoyster.com

nancy@drakesbayoyster.com

February 3, 2009

Dr. Susan Roberts
Executive Director
Ocean Studies Board
National Academy of Sciences
500 Fifth Street, NW
Washington, DC 20001

Re: Drakes Estero, Becker Report II

Dear Dr. Roberts,

We sent you a letter dated 10/31/08 regarding Becker II (see attached). This letter was prepared following the meeting at the PRNS Red Barn where Ben Becker, Sarah Allen and David Press orally presented this revised report and answered questions posed by Dr Paul Thompson about the report. At the time that this letter was written, we had not yet been provided a copy of Becker II. Most of this meeting was dedicated to Allen, Becker and Press' (all co-authors of Becker II) presentation and Q&A regarding Becker II.

It appears that the authors of Becker (version II) intentionally misrepresented factual scientific information. Their report's statements about Drakes Estero harbor seal protocols are simply wrong, and have misled your panel.

In Becker II, Becker, Allen and Press wrote:

The 2008 pupping season presented an opportunity to investigate the immediate effect of a change in oyster operations. In 2008, the California Coastal Commission (CCC) imposed a seal protection zone which restricted some use of the lateral channel adjacent to OB by oyster boats during the pupping season. Thus, boat use in the lateral channel in 2008 was curtailed from use levels during 2005--2007, and concurrently, mean counts at OB increased from about 61 ± 10 (SE) in 2007 to 81 ± 12 in 2008 despite a nominal increase in oyster harvest, from 466,000 lbs in 2007 to a projected 493,000 lbs in 2008. The restriction of oyster operations also coincided with only one mariculture related disturbance detected in the upper estero in 2008 (versus six in 2007) (Fig. 2B), suggesting that conditions that previously reduced pupping season seal counts may have partially abated due to CCC restrictions.

We therefore suggest that an adaptive management approach for oyster operations be investigated since reducing activity in the area close to seals may have had immediate positive effects. This also suggests that while oyster harvest was a good proxy for impacts on seal counts in the upper estero for 1997--2007, changes in operations such as those experienced in 2008 may make the oyster harvest proxy less useful in the future. For this reason, it is not appropriate to include the 2008 data in the models because of this large change in management.

The authors of NPS Becker II would have the panel believe that CCC imposed upon the oyster farm a "large change in management" which led to a reduction in oyster-related disturbance in 2008. The fact is that the conditions required by the CCC imposed NO change in management or the use of the lateral channel during pupping season whatsoever.

The interagency agreement reached between NPS, NMFS, CDFG and Johnson Oyster Company in 1992 created protocols (attached) for the oyster operation regarding harbor seals – which include a pupping season lateral channel closure. DBOC has always

known about these protocols and has always followed these protocols, including the lateral channel closure. These protocols were provided to us and explained in detail by CDFG when we were assigned the shellfish leases in 2005. The authors were wrong and, as a result, the Becker II report and its analyses are severely flawed.

This incorrect statement by the authors leads to a very serious question. Did Becker, Allen and Press know about the Drakes Estero seal protection protocols that have been in force since 1992? Because they are the NPS officials in charge of the seals in Drakes Estero, they certainly should. However, by the above statement made in Becker II, one must assume that they were not aware of the NPS et al protocols.

The Department of Interior's Inspector General investigated the Point Reyes National Seashore and published its report on 07/22/08. The IG found PRNS scientists were engaged in scientific misconduct and exposed part of their misconduct. Proof that Dr. Sarah Allen and the NPS actually did know about the protocols is contained in the following section of that report. Sarah Allen was quoted:

Allen explained that the pre-existing seal site from the 2005 map that was extended on the 2007 map was a "lateral channel" that Lunny knew he was not supposed to use. She referred to a 1992 agreement between the Johnson Oyster Company and NPS that indicated as much. A review of the 1992 Record of Agreement between NPS, the National Marine Fisheries Service, the California Department of Fish and Game, and the Johnson Oyster Company reflected that the lateral channel was closed to boat traffic from March 15 through June 1 and that during the entire month of June, the channel "should be used as little as possible." Allen further explained that the new area circled on the 2007 map was not circled on the 2005 map because it was not a primary pupping area, which she was focused on showing Lunny in 2005. It illustrated a place where seals hauled out of the water.

Sarah Allen explained, in detail, to the DOI IG, that the lateral channel has been closed during pupping season since 1992. A few months later, Sarah Allen told the NAS that these very protocols did not exist – that a new restriction set forth by the CCC first closed the lateral channel during pupping season. This represents additional scientific misconduct presented to your panel.

Becker II claims that the CCC first imposed the lateral channel restriction during pupping season. This is FALSE. The NPS scientists obviously knew about the current interagency protocols. This information, withheld from your panel but provided as an attachment here, contradicts Becker II. The statistical analysis made in Becker II is, therefore, inaccurate and must be corrected.

The final comment in Becker II states:

to population loss. Finally, our results suggest that an important part of managing for protection of pinnipeds may be to
620 provide a higher level of protection around breeding habitat which is not currently protected under the U.S. Marine Mammal Protection Act (www.nmfs.noaa.gov/pr/laws/mmpa).

With this statement, the NPS authors again mislead the NRC panel – any anyone else who reads the Becker report. There is no reference to the current interagency protocols that already provide a much higher level of protection than is required by the Marine Mammal Protection Act. That sentence also appears to be an effort to use incorrect information to impact decision making at PRNS.

The assertions found in Becker II are inaccurate and therefore cannot be relied upon when considering how best to protect the harbor seals of Drakes Estero.

Your panel is charged to answer this question: *What conclusions can be drawn from the body of scientific studies, and how do they compare with what the NPS presented to the public?* We ask that your panel fulfill your charge by also addressing the NPS science presented before you, which has been shown to be false but has still become part of the public record against us and our family and our farm. Please address the following NPS science and conclusions presented before your panel and entered into the public record by NPS:

1. NPS publicly presented, in Becker II, that the California Coastal Commission was responsible for creating an “immediate”... “large change in management” by closing the lateral channel during the 2008 pupping season in Drakes Estero.
2. NPS publicly presented, in Becker II, statistical analysis that was based on the claim that the lateral channel was first closed during the 2008 pupping season.
3. NPS publicly presented, in Becker II that because of the new restrictions imposed by the CCC, their results suggest that increased restrictions on the oyster farm, to provide a higher level of protection, are necessary.

In July of 2007, Senator Feinstein demanded that the NPS have its scientific claims independently reviewed. In a September 26, 2007 letter to Congresswoman Woolsey, NPS Regional Director Jarvis acknowledged that agreement by writing, "At the July 21 meeting, we agreed to a review of the park news report [Drakes Estero Report] by an independent science review..." The NPS chose to have the NAS Ocean Studies Board undertake that review. It is the responsibility of your panel to identify each instance of NPS scientific misconduct---both those instances that occurred before the NAS' involvement, as well as those presented to your panel directly.

Sincerely,

Kevin Lunny

Nancy Lunny