August 11, 2011

Secretary Ken Salazar
Department of the Interior
1839 C Street, NW
Washington, D.C. 20240

Re: Continuance of a Permit in Drakes Estero, Point Reyes National Seashore for the Drakes Bay Oyster Company

Dear Mr. Secretary:

We write to recommend that you exercise your discretion to grant a Special Use Permit for the continuance of the Drakes Bay Oyster Company in the Point Reyes National Seashore when its present Reservation of Use and Occupancy expires in November, 2012.

We write as three former Northern California legislators who were personally involved in either the transfer of state tidal lands in 1965 to the Park Service, the necessary additional $35 million funding authorized in 1969 to acquire the 20,000 acres of ranches for the Park's pastoral zone, or the 1976 Wilderness Act which assigned a portion of the Park to wilderness, but retained the 20,000 acres of ranchlands to be operated by lease to private ranchers and the oyster farm to continue to operate as a "prior, non-conforming use."

As you know this has been a controversial issue since April, 2007 when Superintendent Don Neubacher and a senior Park Service scientist accused the oyster operator of endangering the seal population in the Park. The charges were subsequently determined to be false by the Department of Interior in 2008 and by a National Academy of Sciences panel in 2009. Not until 2010, did the Service release three years of logs and daily photographs secretly taken of the seal pupping areas which disclosed that kayakers and others than the oyster operators were the primary cause of seal disturbances.

For some ten weeks we have been talking to leaders on both sides of the controversy and examining the documents, particularly with regard to the environmental issues and the legislative history of the Seashore. The Seashore is somewhat unique in the National Park System in that from the beginning, it was intended to have a considerable part of its area, consisting of the historic scenic ranches being leased back to their owners, and to retain an oyster farm and California's only oyster cannery in the Drakes Estero. The Estero sits in the middle of those 20,000 acres of ranches designated as a pastoral zone; the oyster plant and cannery on the shores of Drakes Estero are in that pastoral zone.
Point Reyes National Seashore was created in 1962 through the leadership of three remarkable men, Congressman Clem Miller, Secretary of Interior Stuart Udall, and Park Director Conrad Wirth.

Wirth's words to the Congress and to the people of Marin County in 1961 were specific:

"EXISTING COMMERCIAL OYSTER BEDS AND THE OYSTER CANNERY AT DRAKES ESTERO......SHOULD CONTINUE UNDER NATIONAL SEASHORE STATUS BECAUSE OF THEIR PUBLIC VALUES. THE CULTURE OF OYSTERS IS AN INTERESTING AND UNIQUE INDUSTRY WHICH PRESENTS EXCEPTIONAL EDUCATIONAL OPPORTUNITIES FOR INTRODUCING THE PUBLIC, ESPECIALLY STUDENTS, TO THE FIELD OF MARINE BIOLOGY."

In 1965, Assemblyman William Bagley, at the request of the Park Service, caused to be enacted A.B. 1024, conveying the State of California's tidelands and bottomlands within the Seashore to the Park Service, reserving however the fishing rights which then included shell fishing rights, traditionally leased by the state for oyster production.

Then in 1969, when the initial appropriation of $19 million became exhausted, with the threat of subdivision hanging over the Seashore, a second term Congressman was able to convince a reluctant Nixon White House to grant an additional $35 million to purchase the remaining ranch lands, which were to be continued to be operated in the 20,000 pastoral zone surrounding the Estero.

In 1972, the late Congressman Phil Burton gave the Bay Area the priceless gift of the Golden Gate National Recreation Area (GGNRA) situated just south of Point Reyes.

In 1974, Congressman John Burton and Senator John Tunney introduced bills to designate a portion of the Seashore as wilderness. Department of Interior Secretary Jon Kyl pointed out that the State of California had reserved fishing rights in the submerged lands, which was inconsistent with the submerged lands qualifying as pure wilderness. The bills were amended to add 8,000 acres surrounding and including Drakes Estero as potential wilderness. Both Congressman Burton and Senator Tunney testified that the oyster farm was intended to continue as a prior, non-conforming use within the potential wilderness area.

**BURTON:** "THERE ARE TWO AREAS PROPOSED FOR WILDERNESS WHICH MAY INCLUDED AS WILDERNESS WITH 'PRIOR, NON-CONFORMING USE.' ONE IS DRAKES ESTERO WHERE THERE IS A COMMERCIAL OYSTER FARM. ...."

**TUNNEY:** "ESTABLISHED PRIVATE RIGHTS OF LANDOWNERS AND LEASEHOLDERS WILL CONTINUE TO BE RESPECTED AND PROTECTED. THE EXISTING AGRICULTURAL AND AQUACULTURAL USES CAN CONTINUE."
Prior to the passage of the Act, both the Citizens’ Advisory Commission of the GGNRA and the Sierra Club also concluded, and so recommended that the oyster farm and cannery could continue as a prior, non-conforming use.

For your convenience, we have attached the precise words of Park Director Wirth in 1961, and the words of the principals approving the continuation of the oyster farm at the time of the 1976 Wilderness Act as Exhibit A. Relevant excerpts from the California Bancroft Library’s historical essay, SAVING POINT REYES NATIONAL SEASHORE, 1969-70, are attached as Exhibit B, and the affidavit of Assemblyman Bagley, with related documents attached as Exhibit C.

We think you will find the words of former Assistant Secretary Nathaniel Reed (last page of Exhibit A) of particular significance.

In our inquiries we have identified three opposing views held by honorable people, all of whom, however, have forgotten or want to set aside as no longer applicable, the commitments made in 1962 and particularly their own words and those of Senator Tunney, Congressman Burton and Assistant Secretary Reed regarding the preservation of the oyster farm as a non-conforming use in 1976/1975.

Former State Secretary of Resources Huey Johnson argues that all private operations in National Parks should be eliminated. Another group center on the single sentence in the House Committee Report accompanying the 1976 Act, setting forth the expectancy that non-conforming uses will be removed with all due speed. A third view is held that whenever there is a chance to add additional "pure" wilderness, for use only by kayakers, canoeists and hikers, the opportunity should be seized.

We have weighed these views, but believe that they are far less compelling than the commitments made back in 1976 and earlier. We are satisfied after hearing from several leading scientists outside the Service, and from the report of the National Academy of Sciences panel requested by Senator Feinstein that the 77 years of operation of the oyster farm has not endangered the local seal or bird life populations. The cannery is perhaps visited by more school children and other visitors than any other spot in the Park. The Academy of Sciences panel, in addition to finding that there was no substantial evidence of any danger to the seal population, has pointed out that the oyster farm serves as a wonderful basis for future research. Finally, producing 80% of the Bay Area's oysters, over 440,000 pounds annually, for human consumption, it meets the Commerce Department's new emphasis on local mariculture.

Each of us agreed some weeks ago that we would not make this recommendation to you if we found that the oyster farm represented any significant danger to the Estero's environment, its seal population or its bird life. It’s only drawback seems to be that kayakers, canoeist and hikers will see some 140 acres of the 2,200 acre Estero covered with oyster racks and bags at low tide when they go out to see the seals and wildlife.
The convincing point was made by the Coastal Commission biologist, Dr. John Dixon, when he stated: "I don't think there is any non-correlative evidence either way whether the oyster operation endangers the seal population." This of course put the lie to the Park Service's claims back in 2007 that started this whole controversy.

We are also compelled to note that the deliberate misrepresentations of science by the Park Service, and particularly its failure for three years to disclose its logs and photographs which not only disproved its contentions of damage to the seals by the oyster farm, but put the blame on kayakers and others for most of the seal disturbances has created a wide distrust of a one of the few remaining revered institutions of our Government. None of us have ever met a Park Ranger who wasn't courteous, helpful, truthful and competent. The Neubacher Administration, however has been guilty of misconduct and deceit, as found by the Department's Inspector General. We have attached a summary of the deceptions and withholding of factual data prepared by a Member of the National Academy of Sciences whose home overlooks the Seashore as Exhibit D. A copy of the Seashore's brochure, with a map of the pastoral and wilderness areas is appended as Exhibit E.

It seems highly possible to us that the there are elements in the Park Service Administration, which have had a secret agenda for some years to drive out not only the oyster farm, but the privately-leased ranches as well. There have been a whole series of small impositions on the ranchers which serve to make their operations more difficult. As of last weekend, for example, the Park Service had made no attempt to keep the wild tule elk herds in the northern wilderness section of the Seashore from breaking out onto the cattle ranches in the pastoral zone.

We think it might go a long way to restore public confidence in the Park Service to hold appropriate congressional committee hearings to ascertain why the Service seems dedicated to setting aside the words of Director Wirth of fifty years ago, and the testimony of Congressman Burton and Senator Tunney and the words of former Assistant Secretary Nat Reed regarding the 1976 Wilderness Act.

Thanking you for your public service which has done so much to restore the integrity of the Department of Interior after the scandals of the previous Administration, we remain,

Respectfully,

WILLIAM T. BAGLEY  
California State Assembly, 1961-74

JOHN L. BURTON  
Member of Congress, 1974-82

PETE McCLOSKEY  
Member of Congress, 1967-82