

March 4, 2013

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Re: Appendix 4: Analysis of DOI OIG Investigative Report of DBOC EIS

Table of Contents

1. IG REPORT DID NOT ACCURATELY REFLECT DR. GOODMAN’S COMPLAINT: IG Ignored Some of Dr. Goodman’s Allegations and Added Ones He Never Made	2-5
2. IG REPORT MADE SERIOUS ERRORS OF FACT: IG Erred in Citing the Major Adverse Impacts in the DEIS	5-6
3. IG REPORT ERRED IN CONCLUDING NPS DID NOT VIOLATE NPS POLICIES: IG Cherry-Picked Law and Policy and Ignored Mandatory Regulations	7-23
4. IG REPORT ERRED IN CONCLUDING NPS PROXIES WERE APPROPRIATE: The Jet Ski Misrepresented the Oyster Skiff and the Cement Truck Misrepresented the Oyster Tumbler	23-30
5. IG REPORT ERRED IN CONCLUDING NPS DID NOT DECEIVE THE PEER REVIEWER: IG Accepted Testimony Contradicted By Documents and Emails	31-44
6. IG REPORT STRAW MAN ARGUMENT #1: IG Allegation Concerning NPS Staff Conflicts of Interest is Not From Dr. Goodman’s Complaint	44-47
7. IG REPORT STRAW MAN ARGUMENT #2: IG Allegation Concerning Number of DBOC Boat Trips is Not From Dr. Goodman’s Complaint	47-55
8. IG REPORT STRAW MAN ARGUMENT #3: IG Allegation Concerning Best Available Science is Not From Dr. Goodman’s Complaint	55-57
9. DOI FROST REPORT: The Current IG Report Isn’t the First Time the DOI OIG Dropped The Ball In this Case	57-59

1. IG REPORT DID NOT ACCURATELY REFLECT DR. GOODMAN'S COMPLAINT: IG Ignored Some of Dr. Goodman's Allegations and Added Ones He Never Made

Dr. Goodman submitted a 270-page complaint concerning NPS misconduct to the DOI OIG on April 24, 2012. His complaint was focused on six allegations all involving the soundscape analysis in the NPS Draft Environmental Impact Statement (DEIS).

In the synopsis of the IG report on page, the IG purports to summarize Dr. Goodman's allegations in the second paragraph.

Instead of simply repeating Dr. Goodman's six allegations, and then responding to them sequentially in the report, the IG altered the allegations, some of which Dr. Goodman made, and some of which he did not. Instead of using the language in Dr. Goodman's complaint, the IG redefined Dr. Goodman's complaint and changed many of the allegations.

Having altered Dr. Goodman's complaint in the synopsis, the IG report then changed the altered allegations in the body of the report. The IG described one set of nine allegations representing Dr. Goodman's complaint in the second paragraph of the synopsis, and another set of ten allegations in the subheadings in the body of the report.

In both listings, some of Dr. Goodman's allegations were ignored without disclosure and without explanation.

For example, Dr. Goodman's allegation #4 is not included in IG report. Dr. Goodman wrote:

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

Nowhere in the report does the IG address or investigate this allegation. On the other hand, allegations that Dr. Goodman never made are included, investigated, and dismissed. These were straw-man arguments.

Wikipedia defines a straw man as follows:

"A straw man ... is a type of argument and is an informal fallacy based on misrepresentation of an opponent's position. To "attack a straw man" is to create the illusion of having refuted a proposition by replacing it with a superficially similar yet unequivalent proposition (the "straw man"), and to refute it, without ever having actually refuted the original position. This technique has been used throughout history in polemical debate, particularly in arguments about highly charged, emotional issues."

This definition captures the OIG response to Dr. Goodman's misconduct complaint.

Below are the six allegations from page 2 of Dr. Goodman's submittal to Acting IG Mary Kendall on April 24, 2012, and the IG description of those allegations in the synopsis from page 2 of the IG report on February 7, 2013.

The comparisons below show the following. The IG report synopsis failed to include at least three of Dr. Goodman's six allegations (#3-5) and only partially dealt with another

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct (#6). In the IG's 9 points, the IG incorrectly attributed to Dr. Goodman three points that were not made by Dr. Goodman (#6 7, 9), and took a minor sub-point and made it a major point (#5).

In summary, right from the very beginning of the report (the "Synopsis"), the IG altered the description of Dr. Goodman's complaint. His six major allegations were transformed in such a way as to ignore certain allegations, and include others that Dr. Goodman never made. These were straw man arguments. It was a bait and switch. Even though Dr. Goodman's submittal was organized and detailed, the IG chose to only address pieces of the complaint, and to address items Dr. Goodman never presented at all.

Dr. Goodman's description of his complaint as filed on April 24, 2012:

- (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."*

IG description of Goodman's complaint in report synopsis on February 7, 2013 (taken from paragraph 2 of the Synopsis on page 2):

- (1) *"NPS and VHB failed to use the "best science available" when selecting proxy data to represent the Company's equipment ..."*
- (2) *"NPS was required to collect actual noise emissions from Company equipment."
"... NPS ... deviated from soundscape management regulations and policies."*
- (3) *"... draft edits and revisions were performed with the intent to deceive the public, peer reviewers, and decision makers."*
- (4) *"... NPS and VHB staff engaged in misconduct and/or scientific misconduct."*
- (5) *"... NPS influenced decisions over where to place ambient sound level collection devices in Drakes Bay ..."*
- (6) *"... NPS ... influenced VHB to report unfavorable findings ..."*
- (7) *"... NPS and VHB staff failed to recuse themselves from the DEIS project, despite the appearance of conflicts of interest."*
- (8) *"... the deceptive information in the DEIS constituted fraud ..."*
- (9) *"... the institution of the EIS process in order to issue an SUP was unwarranted and therefore wasted taxpayer funds."*

Thus, the IG took six specific allegations from Dr. Goodman’s submittal and expanded them to nine allegations. In doing so, three of Dr. Goodman’s allegations were dropped, and three other allegations that Dr. Goodman never made were added. This was a bait and switch. This distortion of Dr. Goodman’s submittal led to an altered IG report.

Dr. Goodman’s complaints as addressed in IG report synopsis

Goodman’s #1 = IG’s #2 (listed separately in two places in this paragraph)

Goodman’s #2 = IG #1

Goodman’s #3, #4, #5 = not in IG synopsis (#4 not in IG report)

Goodman’s #6 = partially included in IG #3

IG synopsis of Goodman’s complaint not found in Dr. Goodman’s complaint

IG #4 and #8 are simply general characterizations of Dr. Goodman’s overall complaint

IG #5 was mentioned as a small point to Goodman’s #4 that overall was not addressed

IG #6 is not in Goodman complaint

IG #7 is not in Goodman complaint; Senator Feinstein and Kevin Lunny made this point about NPS staff directly involved with the EIS some time ago, but not Goodman in his complaint; rather, Goodman claimed that the NPS and DOI Scientific Integrity Officers were conflicted, but the IG did not respond to that allegation

IG #9 is not in Goodman complaint; Goodman neither said this, nor agrees with this

The main body of the IG report contained a different, overlapping list of ten allegations.

number	IG Report: <i>Allegations ...</i>	pages	In Goodman's allegations?
1	<i>Of The Over- and Underestimated Sound-Level Data to Represent Company Equipment</i>	9-14	Yes, # 2
2	<i>Of Falsely Represented Percentage of Use by the Company/Availability of Key Information</i>	14-19	No
3	<i>Of False Representations of Key Acoustic Data</i>	20-23	Yes, # 3
4	<i>Of Failure to Use best Available Science Pertaining to Soundscape</i>	23-26	No
5	<i>That Draft Revisions Were Intended to Deceive the Public and Decisionmakers</i>	26-28	Yes, # 6
6	<i>That the DEIS Deceived the Peer Reviewers</i>	28-32	Yes, # 6
7	<i>That NPS Influenced Selection of Volpe Microphone Onsite and Data Collected on the Company</i>	32-25	No
8	<i>That NPS Influenced VHB to Report Negatively Against the Company</i>	35-37	No
9	<i>That NPS Failed to Follow Management Policies</i>	37-39	Yes, # 1
10	<i>Of Conflict of Interest</i>	39-41	No
Total			5 Yes, 5 No

As shown above, the main body of the IG report contained a different, overlapping list of ten allegations attributed to Dr. Goodman. In the table above are the ten “allegations” from the body of the IG report, identifying which were included in Dr. Goodman’s six allegations, and which were new allegations of misconduct falsely attributed to Dr. Goodman that he did not make (i.e., straw man arguments), or certainly did not emphasize.

In summary, the IG report attributed ten allegations of misconduct to Dr. Goodman’s April 24, 2012 complaint, only five of which he made, and the other five he did not. This was a straw man argument. The IG manipulated Dr. Goodman’s complaint. Thus, 50% of the allegations of misconduct in the IG report (taking up 14 pages or 33% of the length of the report) are not found in Dr. Goodman’s 270-page submittal to the DOI OIG.

2. IG REPORT MADE SERIOUS ERRORS OF FACT: IG Erred in Citing the Major Adverse Impacts in the DEIS

On December 21, 2012, Senator David Vitter wrote to DOI Acting Inspector General Mary Kendall. Senator Vitter wrote:

“It is frustrating that the Office of the IG seems incapable of acting independently or able to provide clear determinations on violations of the Data Quality Act, as well as other White House and internal agency standards for scientific integrity. In this Drakes Estero situation alone, it is clear that NPS employees in multiple instances eschewed meeting standards of scientific integrity. Additionally, I have some very significant concerns that your office may have gone out of its way to protect Interior employees for which you were supposed to be independently investigating.”

On January 16, 2013, Deputy Inspector General Mary Kendall responded to Senator Vitter. She stressed the length of time required for a proper DOI OIG investigation:

“The process can be extremely lengthy, but it ensures that OIG reports are well-written, understandable, and factually accurate. Therefore, while the investigation itself may be completed, the report may be far from complete.”

She stressed the importance of accuracy in the lengthy review process for an IG report. This is interesting given the errors of fact in the IG report released on February 7, 2013.

The IG report erred in misrepresenting the most important conclusion from the DEIS – the finding of two major adverse impacts (of which soundscape was one).

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct
IG report page 6, ¶ 2:

*“The September 2011 draft identified two areas that were assessed as having major impacts on the Seashore using thresholds ranging from negligible, minor, moderate, to major; **the two areas assessed as major were soundscape and socioeconomic.**”* [bold emphasis added]

As shown in Table ES-4 in the executive summary of the DEIS, the two areas assessed as having major adverse impacts were soundscape and wilderness, not socioeconomic.

There was another potential assessment category that the IG did not mention: beneficial. The socioeconomic resource topic was the one area in which the alternatives in which DBOC remained for the next decade was considered a “*beneficial impact.*”

Had the IG properly fact-checked their report, they could have avoided this major error. How did the IG misquote the two major adverse impacts in the DEIS?

A second example of the lack of fact checking involves a claim on page 10 of the IG report concerning how VHB found and used the Jet Ski measurement in the Noise Unlimited 1995 report to misrepresent the DBOC oyster skiff. The IG report stated:

*“VHB’s acoustics representative and director of Air Quality and Noise Services spoke with us regarding the sound-level data used in the DEIS. ... He stated that during his research for this project, **he personally located the NU 1995 report on the Internet** and subsequently selected the watercraft measurements from the NU report to represent Company boats, which was based on information collected by VHB staff members during Company site tours.”* [Bold emphasis added]

In Dr. Goodman’s May 2012 interview, he told the IG that the Noise Unlimited 1995 report was not available on the Internet. Given the claim by the VHB acoustics representative about the Internet being the source of the Noise Unlimited report, it would seem that the IG would have at least done its own confirmatory web search and published the web link for the report. However, there is no such information provided in the IG report. After another recent search, we conclude that there is no website accessible to a public search that contains the Noise Unlimited report. In fact, Dr. Goodman first found the report by asking an assistant to seek the report from Noise Unlimited (which was out of business) and then the New Jersey State Police (who no longer had the report). Given those dead ends, he noticed a citation to the report (but not the report itself) on the Internet, and as a result, the assistant finally obtained a copy from the Personal Watercraft Association.

In summary, what is troubling about these errors is that it indicate that the IG did not carefully read the DEIS, and did not carefully fact-check their own IG report. Moreover, it indicates that during the several intervening months in which NPS and DOI had copies of the draft IG report, they also did not properly review the IG report for accuracy, because all of them missed this fundamental error.

3. IG REPORT ERRED IN CONCLUDING NPS DID NOT VIOLATE NPS POLICIES: IG Cherry-Picked Law and Policy and Ignored Mandatory Regulations

DR. GOODMAN’S ALLEGATION #1

In allegation #1 on page 2 of Dr. Goodman’s 270-page complaint filed with Acting Inspector General Mary Kendell, he stated that NPS and VHB staff:

“Failed to follow NPS Management Policies 2006 and NPS Director’s Order #47.”

That was Dr. Goodman’s allegation #1 of six allegations of misconduct. It was clear, focused, and backed up by quotations from both NPS policies. Dr. Goodman subdivided allegation #1 into four points as follows.

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

- a) Cited NPS 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.*

Dr. Goodman’s complaint focused on the failure of NPS to follow NPS Management Policies 2006 and Director’s Order #47. In the hierarchy of NPS policies, the Management Policies 2006 are at the top in terms of importance. In the DEIS, the NPS stated that its analysis of soundscapes was based on both of these policies.

On page 3 of his April 24, 2012 complaint filed with the OIG, Dr. Goodman wrote:

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.”

Dr. Goodman then quoted the DEIS as follows:

“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).”

DEIS CITED MANAGEMENT POLICIES 2006 & DIRECTOR'S ORDER 47

In the DEIS, NPS wrote:

“In accordance with NPS Management Policies 2006 and Director’s Order 47: Soundscape Preservation and Noise Management (DO-47), an important part of the NPS mission is preservation of natural soundscapes within units of the national park system (NPS 2006d, 2000)” (chapter 1, page 26)

*“NPS Management Policies 2006 (NPS 2006d) sets the framework and provides the direction for actions of the NPS. **Adherence to policies is mandatory unless allowed by enabling legislation, or waived or modified by the Secretary, Assistant Secretary, or the Director**, or if a law directly and specifically directs an action contrary to NPS policy. Management Policies 2006 also contains guidance applicable to the alternatives contained in this document.”* (chapter 1, page 39) [bold emphasis added]

The key statement from this quote is that adherence to NPS Management Policies 2006 is “*mandatory*” unless waived or modified by the Secretary, Assistant Secretary, or the Director. The IG presented no evidence that such a waiver was requested or granted.

In the DEIS, NPS further wrote:

“Section 4.9 of NPS Management Policies 2006 directs NPS to preserve, to the greatest extent possible, the natural soundscapes of units of the national park service. ... Director’s Order 47: Soundscape Preservation and Noise Management further guides toward the maintenance and restoration of natural soundscapes.” (chapter 3, page 201-202)

“NPS Management Policies 2006, section 4.9, “Soundscape Management,” requires that NPS “preserve, to the greatest extent possible, the natural soundscapes of parks.” Additionally, NPS “will restore to the natural condition wherever possible those park soundscapes that have become degraded by the unnatural sounds (noise), and will protect natural soundscapes from unacceptable impacts” (NPS 2006d).” (chapter 4, page 350).

*“Director’s Order 47: Soundscape Preservation and Noise Management was developed to emphasize NPS policies “that will require, to the fullest extent practicable, the protection, maintenance, or restoration of the natural soundscape resource in a condition unimpaired by inappropriate or excessive noise sources.” This Director’s Order 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***

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct (NPS 2000).” (chapter 4, page 350). [bold emphasis added]

*“Additionally, NPS Management Policies 2006, section 8.2.3, “Use of Motorized Equipment,” acknowledges that motorized equipment operating in national parks could adversely impact the park’s natural soundscape. To preserve the natural soundscape, park superintendents will manage when and **where motorized equipment is used, evaluating effects on the natural soundscape** against the natural ambient sound level (that which exists in the absence of human-induced sounds) (NPS 2006d).”* (chapter 4, page 350) [bold emphasis added]

In the DEIS, NPS quoted from NPS Management Policies 2006, sections 4.9 and 8.2.3, said adherence was mandatory, and quoted from Director’s Order 47.

The emphasis of the citations and discussion in the DEIS concerning Management Policies 2006 was their directive to Park managers to preserve and restore the natural soundscape of parks. What NPS did not properly discuss in the DEIS was the directive from Management Policies 2006 for Park managers to directly measure the noise coming from human sources including motorized and mechanical equipment.

NPS was mandated to directly measure DBOC noise-generators, but in the DEIS, did not acknowledge that directive, did not make direct measurements, and did not inform the reader that the data provided in Table 3-3 (DBOC Noise Generators) were in fact not from DBOC or Drakes Estero, but rather from other equipment at other locations. NPS used measurements from a Jet Ski from the New Jersey shore in 1995 to misrepresent the DBOC oyster skiff in Drakes Estero, and a cement truck with a large diesel engine to misrepresent the DBOC plastic oyster tumbler with a much smaller electric motor.

Dr. Goodman called these ‘misrepresentations.’ The IG and NPS now call these ‘representations’ or ‘proxies.’ It is important to note that neither of those words was included in the DEIS.

IG DISMISSED DR. GOODMAN’S ALLEGATION #1

What did the IG conclude concerning Goodman’s allegation #1 that NPS failed to follow NPS Management Policies 2006 and NPS Director’s Order #47?

The IG dismissed this allegation in its entirety. The IG findings are on page 37-39 in the section: *“Allegations That NPS Failed to Follow Management Policies”*

On page 37, ¶ 4 of the IG report, they summarized Goodman’s allegation #1:

*“The complainant alleged that NPS deviated from its own 2006 management policy, as well as NPS’ Director’s Order 47, “Soundscape Preservation and Noise Management.” The complainant based these allegations on VHB and NPS’ alleged failure to “measure [Company] noise generators.” The complainant claimed that NPS was “**directed by these policies to identify noise-generating human activities, measure human-generated sounds, [and] measure baseline conditions. ...**”*

[Company] noise sources had an unknown impact until proxies were selected & analyzed using NPS' thresholds. Lastly, he alleged that NPS or VHB 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.” [bold emphasis added]

It is important to note that one of the quotations attributed to Dr. Goodman was not made by him (this occurred in other sections of the IG report as well). In the **black bold** sentence in the quote above, the first part (“*directed by these policies ...*”) came from page 19, point 1b of Dr. Goodman’s complaint. The quote in the next sentence came from page 19, point 1d of his complaint. But in the **red bold** sentence above, the second part after the ellipsis (“... *[Company] noise sources had an unknown impact ...*”) did not come from Dr. Goodman’s complaint, and certainly not from the summary of the allegations on page 19. This is a paraphrase of the IG’s findings from the next paragraph, incorrectly inserted into the quote from Dr. Goodman’s complaint to make it seem as if Goodman said this, when he did not. “Proxy” is not a word Dr. Goodman used anywhere in his complaint, nor is the word “threshold.” Rather, these are words used by NPS, VHB, and IG throughout the IG report to try to explain their actions.

The IG concluded the following concerning Dr. Goodman’s allegation #1. On page 37, ¶ 4 of the IG report, they wrote:

*“Our investigation found no evidence to suggest that NPS violated Director’s Order 47 or that it deviated from NPS policy regarding soundscape management or the EIS process. **CEQ, NEPA, and NPS EIS regulations and guidance did not require NPS to measure Company noise generators since Company noise emissions had never been named as having a potential impact on the environment or wildlife.** Neither NPS nor VHB staff predicted that Company equipment would have been assessed as having a major impact, and they were unaware of the totality of the impacts until the proxies were selected and NPS thresholds were applied.”* [bold emphasis added, see below]

In summary, the IG concluded that NPS did not have to follow NPS policy regarding soundscape management, Director’s Order #47, CEQ, or NEPA regulations mandating direct measurement of DBOC noise generators because NPS did not know that the DBOC noise generators might have a potential impact on the environment or wildlife. The IG accepted the NPS and VHB pleading of ignorance. It is important to note that the IG explicitly cited Director’s Order #47 but did not explicitly state “Management Policies 2006” (which is bound by the mandatory clause unless waived).

IG REPORT FAILED TO CITE AND ADDRESS MANAGEMENT POLICIES 2006 AND FAILED TO HOLD NPS ACCOUNTABLE

While discussing the soundscape analysis, the IG did not actually cite “Management Policies 2006” as specifically stated and quoted in Dr. Goodman’s complaint, but rather

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct cited it as “2006 management policy” or “NPS policy.” It was an odd choice of words to avoid explicitly stating – and applying – the key NPS policy. The DEIS clearly stated that NPS was aware that it had to follow NPS Management Policies 2006, with specific reference to sections 4.9 and 8.2.3 (two of the three relevant sections of that document, the other being section 8.2.2). Dr. Goodman clearly stated that NPS failed to follow NPS Management Policies 2006. The IG, however, never specifically cited this most-important management policy concerning soundscape.

The IG did specifically cite Director’s Order #47, and quoted from it in the background section of the IG report. But the IG never stated the name “Management Policies 2006” or quote from this key NPS policy document when discussing soundscape analysis, even though this document formed the basis of an explicit and mandatory requirement on NPS managers, as cited in Dr. Goodman’s complaint.

In the IG report background section concerning wilderness, the IG cited the Management Policies 2006 by name in the footnotes (on policy §6.2.2.1) and in the text on page 2 when they wrote concerning wilderness:

“According to NPS 2006 Management Policies for Wilderness Preservation and Management §6.3.1, potential wilderness areas are required to be managed under the same guidelines as wilderness areas to the extent that existing nonconforming conditions allow.”

But the IG never cited any of the key sections of NPS Management Policies 2006 (§4.9: Soundscape Management; §8.2.2: Recreational Activities; or §8.2.3: Use of Motorized Equipment) when referring to soundscape.

Most of the relevant rules and regulations (except for Management Policies 2006) were described and quotations provided in the background section of the IG report. Why did the IG fail to cite and quote from the relevant sections in Management Policies 2006?

IG report page 4, ¶ 3-5: CEQ regulations:

“CEQ [Council on Environmental Quality] regulations address how NPS should collect information for the EIS.”

“If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.”

IG report page 4, ¶ 6: NEPA regulations:

“In addition, NEPA guidance for the EIS process (40 C.F.R. § 1502.24), regarding “Methodology and Scientific Accuracy,” states: “Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.”

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct
IG report page 4, ¶ 8: Director’s Order #47 regulations:

NPS Director’s Order #47: “provides NPS with operational policies under NEPA ...”

“The order requires park planning efforts to –

- 1. describe the baseline natural ambient sound environment in qualitative and quantitative terms;*
- 2. identify sound sources and sound levels consistent with park legislation and purposes;*
- 3. identify the level, nature and origin of internal and external noise sources;*
- 4. articulate desired future soundscape conditions; and*
- 5. recommend the approaches or actions that will be taken to achieve those conditions or otherwise mitigate noise impacts.”*

“According to Order 47, ambient sounds attributable to human activities in National parks are defined as human-made sound. ... It is these sounds and sound levels that need to be measured and evaluated in park planning processes to determine whether they are consistent with or detrimental to soundscape management objectives.”

The above paragraph in the IG report is nearly a precise quote from Director’s Order #47 which stated:

“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 summary, no quotes were provided in the background section of the IG report concerning soundscape policies from Management Policies 2006. No quotes were provided in the section (page 37-39) of the response to Dr. Goodman’s allegation #1 concerning the NPS failure to follow NPS policies. The IG report ignores the specific requirements and mandatory obligations of Park managers under Management Policies 2006. Yet this is the dominant NPS policy, and one of the two policies that Dr. Goodman alleged NPS failed to follow. This absence is glaring in the IG report.

WHAT THE IG FAILED TO CITE AND ADDRESS FROM MANAGEMENT POLICIES 2006 SOUNDSCAPE MANAGEMENT

Below are quotations from Management Policies 2006 not cited or addressed in the IG report. All of this was clearly cited in Dr. Goodman’s complaint.

The NPS Management Policies 2006 (§4.9: Soundscape Management) direct managers to monitor and evaluate human activities that generate noise including noise caused by mechanical and electronic devices. It stated:

“Using appropriate management planning, superintendents will identify what levels and types of unnatural sound constitute acceptable impacts on park natural soundscapes. The frequencies, magnitudes, and durations of acceptable levels of unnatural sound will vary throughout a park, being generally greater in developed areas. In and adjacent to parks, the Service will monitor human activities that generate noise that adversely affects park soundscapes, including noise caused by mechanical or electronic devices. The Service will take action to prevent or minimize all noise that through frequency, magnitude, or duration adversely affects the natural soundscape or other park resources or values, or that exceeds levels that have been identified through monitoring as being acceptable to or appropriate for visitor uses at the sites being monitored.”

The NPS Management Policies 2006 (§8.2.2: Recreational Activities) direct managers to monitor and evaluate the use of motorized equipment. It stated:

“Park managers will (1) identify what levels and types of sounds contribute to or hinder visitor enjoyment, and (2) monitor, in and adjacent to parks, noise-generating human activities – including noise caused by mechanical or electronic devices – that adversely affect visitor opportunities to enjoy park soundscapes.”

The NPS Management Policies 2006 (§8.2.3: Use of Motorized Equipment) direct managers to monitor and evaluate the use of motorized equipment. It stated:

“The Service will strive to preserve or restore the natural quiet and natural sounds associated with the physical and biological resources of parks. To do this, superintendents will carefully evaluate and manage how, when, and where motorized equipment is used by all who operate equipment in the parks, including park staff. Uses and impacts associated with the use of motorized equipment will be addressed in park planning processes. Where such use is necessary and appropriate, the least impacting equipment, vehicles, and transportation systems should be used, consistent with public and employee safety. The natural ambient sound level—that is, the environment of sound that exists in the absence of human-caused noise—is the baseline condition, and the standard against which current conditions in a soundscape will be measured and evaluated.”

The NPS Management Policies 2001 (§8.2.2) contained many similar statements to the Management Policies 2006 (see above). For example, the NPS Management Policies 2001 (§4.9) made a similar statement to Management Policies 2006.

In summary, the IG report never documented the requirements of Management Policies 2006 or its predecessor, Management Policies 2001, which had been in effect for over a decade. Nevertheless, the IG came to a conclusion that was

deceptively written to mention “*NPS policies*” but not **NPS Management Policies 2006 per se**. The IG concluded that NPS did not have to follow **Director’s Order #47, CEQ, or NEPA regulations** that mandated direct measurements of DBOC noise generators because NPS did not know that the DBOC noise generators might have a potential impact on the environment or wildlife. This was a post-hoc explanation.

The IG ignored **Management Policies 2006** that directed Park managers to make measurements of these human-made noise generators. The IG avoided discussing that the DEIS stated they followed **Management Policies 2006 and Director’s Order 47**, and never mentioned not following these directives, or applying for or receiving a waiver not to follow them.

IG CLAIMED NPS AND VHB STAFF WERE UNAWARE OF SOUND ISSUE, DID NOT HAVE TO FOLLOW NPS POLICIES MANDATING MEASUREMENTS, AND DID NOT MAKE NOISE MEASUREMENTS

What evidence did the IG present that NPS and VHB staff had no knowledge that DBOC noise generators might have a potential impact on the environment or wildlife?

Is this a correct interpretation of the regulatory requirement of Management Policies 2006, Director’s Order #47, CEQ, and NEPA regulations?

Management Policies 2006 (which are nearly identical to Management Policies 2001, and thus had been in effect for over a decade) require Park managers to “... *identify what levels and types of sounds contribute to or hinder visitor enjoyment ...*” and monitor “*noise-generating human activities – including noise caused by mechanical or electronic devices ...*” throughout their park. Why had NPS never measured the DBOC noise generators? Why was this not a requirement? Wasn’t this mandatory? Why did the IG ignore this requirement?

IG report page 38, ¶ 4,5:

*“A review of Director’s Order 47’s requirement to measure man-made noise generators would have been applicable if the Point Reyes staff had previously identified Company noise generators as being problematic, directly impacting the environment, or in direct violation of the terms of the Company’s lease. **Our investigation, however, uncovered no evidence to support that Point Reyes staff had previously identified noise as an issue**, unlike the noise generated by air tours flying over the park, which was measured by the Volpe Center in 2009 in preparation of an ATMP, which generated the Volpe 2011 report.*

*During our investigation, **we interviewed several NPS and VHB staff members who attended the scoping meetings [as] well as the teleconferences (see Attachment 58). No one we interviewed recalled predicting or being forewarned that soundscapes would have***

produced an assessment of “major” for impacts.” [bold emphasis added]

It is important to note that while this is the IG’s interpretation of Director’s Order #47, they excluded reference to NPS Management Policies 2006. Those NPS policies required Park managers to be aware of and measure noise generators throughout Point Reyes, and to identify potential problems. That policy has been in effect since 2001, over a decade ago.

IG report page 38, ¶ 6:

“We asked NSD’s [NPS’ Natural Sounds and Night Skies Division] senior scientist about the increased attention soundscapes have received in all National parks. He explained that sound has become a growing area of consideration in EISs since the 1970s because of an increase in evidence showing the direct impacts noise has on wildlife and park visitor experiences.”

If this is the case, and given Management Policies 2006, then why didn’t NPS managers measure the DBOC noise generators? This NPS senior scientist claimed the issue has become a growing area of consideration since the 1970s – more than three decades ago. The Management Policies mandating measurements went into effect in 2001. NPS has been monitoring the potential environmental impact of DBOC since the early 2000’s. Why didn’t the PRNS Superintendent include soundscape in that monitoring? The IG is silent on this issue.

IG report page 39, ¶ 1:

*“Our interviews of the VHB staff responsible for compiling the soundscape data and sections, mainly the EIS project manager and the acoustics representative, revealed **they were unaware of the assessed impacts from Company equipment until all the represented selections and thresholds were applied.** VHB stated that there was a limited amount of reference material to select from for representative data in the fields of commercial fishing equipment and personal watercraft measurements, and the selections were based on mechanical similarities and the percentage of use was based off of Lunny’s verbal estimates of use.”* [bold emphasis added]

It is important to note that DBOC’s small skiff with a 20 horsepower engine is referred to as “*commercial fishing equipment*” throughout the IG report. This is a misrepresentation of the DBOC skiff. There is nothing about the oyster skiff that makes a Jet Ski personal watercraft a similar boat and engine in terms of “*mechanical similarities.*” This comparison is inaccurate and wrong. Never once in the IG report do they acknowledge that this is a small skiff with a small engine.

Finally, to the issue that this DEIS appeared like no other NPS EIS, the IG wrote on page 39, ¶ 2,3:

“The complainant also alleged that the Company DEIS did not resemble any other EIS performed by NPS, and therefore the NPS policy was not followed.”

“During the course of this investigation, we interviewed CEQ and NEPA experts, all of which declared the Company DEIS was a unique situation because there was a commercial fishing venture operating within a potential wilderness area. None of the witnesses we interviewed were able to provide examples of other commercial businesses operating within a protected area ...”

The IG did not explain how this DEIS being ‘different’ changed its regulatory requirements, and how having a commercial business in a potential wilderness did anything other than increase the stringency on data and measurements. NPS has a policy requirement to measure noise-generators in their parks. The uniqueness of this DEIS, given the commercial operation in a potential wilderness area, ought to increase –not decrease – that requirement. The IG said that this DEIS is different because of the unique quality of the potential wilderness area, but then failed to state why NPS does not need to make direct measurements of noise generating equipment in the potential wilderness area. This explanation fails to offer a justification consistent with NPS policies.

In summary, having ignored the mandatory requirement of NPS Management Policies 2006, the IG and NPS argument is that NPS and VHB staff did not have to follow Director’s Order #47, CEQ, and NEPA regulations concerning sound measurements because NPS and VHB staff had no idea, either before the EIS scoping process, during the EIS scoping phase, or up until they used their proxies and thresholds and discovered a major impact, that DBOC equipment was generating noise that might be causing an impact. This is the IG argument for dismissing Dr. Goodman’s allegation #1.

The IG embraced a Catch-22. The policies say to make measurements. NPS did not make measurements, but rather used inappropriate proxies to arrive at a finding of a major impact. A complaint was filed. The IG accepted the NPS explanation that, without having made measurements, they couldn’t have known it was a problem. This is a deceptive and circular argument. As described below, it is also disingenuous. NPS had been told there was an issue, which is why they included “soundscape” as a topic.

IG REPORT CONCLUSION WAS WRONG, AND THE IG KNEW IT: THE IG AND NPS HAD EVIDENCE THAT NPS KNEW OF THE NOISE ISSUE

The IG conclusion that NPS and VHB staff did not have to follow soundscape policies and regulations because they did not know noise was an issue is wrong on several grounds, and the IG had much of this evidence in their possession.

- 1) First, Management Policies 2006 (sections 4.9, 8.2.2, and 8.2.3) gave NPS managers no such release from their duty to make direct measurements of

human-made noise. NPS managers were required (it was mandatory) to measure the impact of noise-generating equipment – especially of “*motorized equipment*” or “*mechanical or electronic devices*” as stated in this NPS policy.

- 2) Second, once NPS and VHB staff ‘discovered’ – using their incorrect proxies and thresholds – that the DBOC noise-generators were (according to their calculations) causing a major adverse impact on the environment and wildlife, NPS and VHB staff were required by NPS policies to make direct measurements. Making such sound measurements is relatively easy, fast, and inexpensive (compared to the overall cost and time to NPS of the EIS process). They already knew of the “*major adverse impact*” in soundscape in spring of 2011. NPS received detailed criticism of the soundscape section of the DEIS from Environ on December 9, 2011. Yet when the final EIS was released in late November 2012, over 18 months after they realized the “*major adverse impact*,” they were still using proxies and thresholds and not direct measurements.

In the FEIS, NPS substituted one proxy (a cement truck for the plastic oyster tumbler) with a different proxy (an Army portable cement mixer filled with gravel and rock for the plastic oyster tumbler), acknowledging that the cement truck (with its 400 HP engine) was not a good proxy for the plastic oyster tumbler (with its ¼ HP, 12-volte electric motor), but NPS never made direct measurements.

Based upon the IG and NPS argument, the NPS and VHB staff knew of the soundscape issue for over 18 months, and knew of the criticisms of their proxy data for nearly one year, but simply made substitutions of the proxy data in the FEIS rather than making direct measurements.

- 3) Third, NPS and VHB staff were aware that sound had been raised as an issue, and the IG knew it as well. The NPS and VHB staff gave incorrect interview statements to the IG, and the IG accepted their statements in spite of mandatory requirements, and having evidence to the contrary.

IG REPORT REVEALED IG KNEW THAT NPS STAFF WERE INFORMED OF NOISE ISSUE, CONTRADICTING IG CONCLUSION

Two pieces of evidence are cited in the IG report that refute the NPS and VHB statements, but the IG ignored that evidence and accepted the NPS and VHB statements.

The first piece of evidence comes from the IG report on page 38 in the same section discussing Dr. Goodman’s allegation #1. The IG report page 38, ¶ 2 stated:

“We interviewed Point Reyes’ outreach coordinator. She recalled other members of Point Reyes staff receiving complaints from visitors, claiming that Company machinery, specifically the pneumatic tools, were “loud” and affected Point Reyes’ visitors’ experience.”

That statement alone makes clear that NPS staff knew prior to the preparation of the EIS that sound was an issue. The outreach coordinator asserted that Point Reyes staff received complaints from visitors about DBOC noise, and claimed the DBOC equipment

affected their visitor experience. That quotation from the Point Reyes outreach coordinator contradicts the IG conclusion that NPS and VHB staff had no knowledge that DBOC noise-generators had a “*potential impact on the environment or wildlife*” made just three paragraphs earlier on page 37.

The IG’s report cited and relied upon NPS ignorance as a defense. Three paragraphs later, the IG’s report contradicted itself and cited NPS knowledge of the ‘sound issue.’ The very reason cited by NPS and accepted by the IG – that they did not know – was internally contradicted by statements from NPS staff three paragraphs later.

DEIS REVEALS THAT NPS KNEW ABOUT NOISE ISSUE

The second piece of evidence comes from the DEIS itself, the NPS document that formed the basis of the complaint and IG report. In the Executive Summary, page xii, Table ES-1, the DEIS stated:

*“In accordance with NPS Management Policies 2006 and Director’s Order 47: Soundscape Preservation and Noise Management (DO-47), an important part of the NPS mission is preservation of natural soundscapes within units of the national park system (NPS 2006d, 2000). Natural soundscapes “encompass all the natural sounds that occur in parks, including the physical capacity for transmitting those natural sounds and the interrelationships among park natural sounds of different frequencies and volumes. Natural sounds occur within and beyond the range of sounds that humans can perceive, and they can be transmitted through air, water, or solid materials” (NPS 2006d). **As identified during public scoping, components of DBOC operations, such as motorized boats and pneumatic drills, create noise that may impact park visitors and wildlife and disturb the natural soundscape of the area. The impact topic of soundscapes is retained for detailed analysis in the EIS.**”*

[bold emphasis added]

In other words, according to NPS, they considered over 25 potential topics during the scoping process, and based upon the public comments and staff analysis, retained 16 topics for the EIS analysis (including soundscape) and dismissed 9 topics. DBOC motorized boats and pneumatic drills were “*identified during public scoping*” as being a potential impact on visitor experience, the environment, and wildlife, and thus soundscape was retained.

Once the soundscape topic was retained for final analysis, wasn’t it incumbent upon the NPS and VHB staff to adhere to NPS policies and regulations and make the correct soundscape measurements?

In summary, the NPS statement in the DEIS indicated that NPS and VHB staff knew that DBOC noise generators were having a potential impact. This contradicts the interview statements given by NPS and VHB staff in the IG report, and negates the conclusion reached by the IG. In their interviews with the IG, both NPS and VHB staff claimed they did not know about the sound issue during

or after the scoping process; according to what they wrote in the DEIS, they actually did know during the scoping process. It was their knowledge of the noise issue that led them to retain soundscape as a topic for further analysis, at the same time they dismissed nine other topics.

PUBLIC COMMENTS DURING SCOPING PROCESS REVEAL NPS KNEW ABOUT NOISE ISSUE BUT DID NOT DISCLOSE TO THE IG

The NPS received around 340 written comments from the public, agencies, and organizations during the public scoping process for the DEIS. NPS reported that they read these comments carefully, and used them in making their decisions of which topics to retain and which to eliminate.

The publically-available NPS Content Analysis Report stated that NPS received 23 comments for “Impact Topic Soundscape.” Below are examples from those 23 comments, some from key NPS supporters from environmental groups that opposed the oyster farm and urged its closure (and that attempted to join DOI in the pending Federal litigation). It is of interest that many of these comments use similar words.

Marin Audubon Society President Barbara Salzman wrote:

“Noise is also a factor. Discuss the impacts of noise on water bird use of the Estero waters (waterfowl, grebes, and loons). Motorboats are used for maintenance, in the Estero and uses percussive, pneumatic equipment to shuck oysters. Also, there often is loud radio music at the facility.”

Marin Audubon Society member Rick Johnson wrote:

“Motor boats, loud radios, and pneumatic shucking equipment spoil the soundscape and disturb wildlife.”

“Noise is also a factor. DBOC operates motorboats in the Estero and uses percussive, pneumatic equipment to shuck oysters.”

National Parks Conservation Association Pacific Regional Director Neal Desai wrote:

“As previously stated, the noise generated by and associated with mariculture operations can adversely impact wildlife and the visitor and recreation experience, and the EIS should consider these impacts. The noise generated includes but is not limited to motorboats, stereos/radios, and pneumatic hammers.”

Environmental Action Committee of West Marin Executive Director Amy Trainer wrote that soundscape should be an impact topic. She quoted from the NPS Management Policies 2006 and asked for “restoration of natural soundscapes.” She wrote:

“NPS must consider the impact of noise from oyster operations on the wilderness experience (noise including pneumatic hammers, motorboats, stereo/radio that oyster workers use).”

Walter Hoffman, identified as “Coastal Commission volunteer,” wrote that when he and his family go to Drakes Estero for a day of canoeing or kayaking they want to “get away

from it all” which is why he hopes that after November 30, 2012 there will be “peace and quiet in a wilderness situation without the sounds of speeding boats and knumatic [sic] hammers (for opening the oysters at the plant).”

Thomas Baty (4069), local environmentalist, wrote:

“On three occasions in the last few years I have heard a very significant noise coming from the land-based mariculture operations that sounded similar to but much louder than a pneumatic nail gun. I have not seen for myself, but have been told by kayakers launching next to the production plant that the source of the sound are pneumatic hammers used to chisel oyster clusters (from the rack cultures) apart. On one very calm clear spring day in 2009 I could distinctly hear this noise all the way to Drakes Head-literally miles away.”

Other public comments included:

“The EIS should consider the impacts of noise associated with oyster farming.”

“The EIS should address protection of the natural soundscape.”

“The negative acoustic/sound impacts to all species that utilize the estero & call it home must be considered in the EIS.”

“The impact of DBOC motorboats operating on the Estero affects the ability of visitors to experience solitude and wilderness. The noise and sound of the motorboats should therefore be considered in relation to their impact on visitors.”

“Has anyone looked at the use of the Estero by birds and considered impacts on them from the noise and disturbance related to operation of a commercial mariculture business?”

“Motor boats, loud radios, and pneumatic shucking equipment spoil the soundscape and disturb wildlife.”

“Soundscapes: NPS must consider the impact of noise from oyster operations on the wilderness experience (noise including pneumatic hammers, motorboats, stereo/radio that oyster workers use).”

“The EIS should address protection of the natural soundscape.”

“Provide the best protection for the natural soundscape.”

Finally, the public comments included photographs of flip charts from the public open-house scoping meet at REI (Berkeley, CA) on October 28, 2010. Of the 64 people who attended that meeting, the following comments were written down:

“the negative acoustic/sound impacts to all species must be considered in the EIS”

“The industrial scale of the operation really needs to be addressed including sound impacts from jackhammers and motor boats, as well as the oyster racks that consume the majority of the estero.”

In summary, NPS and VHB were required to read, process, and assess these public comments. They attended the scoping public meetings. These comments influenced NPS and VHB to pick soundscape as a topic to retain while dismissing nine other categories. Therefore, NPS and VHB cannot claim that they were unaware or uninformed that sound from DBOC noise generators was an issue before, during, or after the scoping process.

SUMMARY CONCERNING IG DISMISSAL OF DR. GOODMAN'S ALLEGATION #1: THE IG REPORT WAS WRONG, AND THEY KNEW IT

Four pieces of evidence – three of which were in the possession of the IG and the fourth of which they simply had to download from the NPS website (the scoping comments) – show that the IG and NPS knew that NPS and VHB staff knew that sound was an issue, and thus NPS was required to make direct measurements of DBOC noise-generators.

- 1) Management Policies 2006 stated that NPS staff were required to investigate DBOC noise-generators. This was mandatory, not discretionary.
- 2) During the scoping process, over twenty people submitted comments describing their concerns about the impact on visitors and wildlife of DBOC noise-generators, and comments were written down on flip charts at public meetings.
- 3) The NPS DEIS stated that NPS and VHB staff knew that DBOC noise-generators had a potential impact on the environment and wildlife.
- 4) The Point Reyes outreach coordinator told the IG, as quoted in their report, that PRNS visitors told multiple NPS staff that DBOC noise was disturbing them.

In summary, four pieces of evidence negate the IG argument that NPS and VHB staff did not know that sound was an issue. Without this argument, the IG would have been compelled to conclude that NPS and VHB staff failed to follow NPS Management Policies 2006 and Director's Order #47 – that Dr. Goodman's allegation #1 was correct.

The IG report was wrong, and the IG had the evidence to know their conclusion was wrong (in the form of their interview with the PRNS outreach coordinator, the executive summary of the DEIS, and Management Policies 2006).

Given that NPS and VHB staff did know – both before and during the scoping process – that the DBOC noise generators were having a potential adverse impact on the environment and wildlife, it was incumbent upon them, according to Management Policies 2006, Director's Order #47, CEQ, and NEPA, to make direct measurements.

The IG erred. Dr. Goodman's allegation #1 was correct. NPS and VHB staff indeed:

"Failed to follow NPS Management Policies 2006 and Director's Order #47."

CEQ REGULATIONS MANDATED THAT NPS WAS REQUIRED TO INFORM PUBLIC THEY DID NOT MAKE NOISE MEASUREMENTS

Given that the potential impact of soundscape on the environment and wildlife was known from both visitor comments to NPS staff, and from public comments made during the scoping process, there is regulatory justification that the IG could have cited (but did not) to excuse NPS for not making direct measurements of DBOC noise generators – exorbitant costs. The CEQ regulations for implementing NEPA (Title 40: Protection of Environment) states in Part 1502 concerning Environmental Impact Statements:

“1502.22 - Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.”

If this case, however, the cost would not have been exorbitant. Compared to the cost of the EIS process (over \$1 million), the cost of doing a noise analysis of DBOC equipment would have been easy and inexpensive. It costs around \$35 to purchase a sound-measuring device from Radio Shack. The Fort Collins soundscape team has all of the necessary equipment. It takes a few hours to make the relevant measurements. Such measurements could be made on multiple days, or even multiple seasons. The NPS has an entire research unit at Fort Collins that specializes in such analysis. The point is that, whatever the cost, it is minimal, and however much time would be required, it too was available within the time frame NPS established for the DEIS and FEIS process.

According to the CEQ regulations for NEPA, if NPS did not make direct measurements of DBOC noise generators, it was incumbent that the *“agency shall include within the*

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct
environmental impact statement ... a statement that such information is incomplete or unavailable.” In the DEIS, NPS neither told us explicitly that the measurements were from “proxy” data (i.e., the Jet Ski and the cement truck), nor told us explicitly that the information was incomplete. In contrast to the conclusion presented in the IG report, NPS failed to follow CEQ and NEPA regulations.

The Draft EIS (DEIS) never used the word “*proxy*.” The DEIS never told the reader that the data were not collected at Drakes Estero of DBOC equipment. The DEIS never stated, as directed by CEQ, that the information was incomplete. They simply wrote:

“Noise sources at DBOC are summarized in table 3-3.” (chapter 3, page 203)

In Table 3-3, they cited sound levels for each piece of DBOC equipment and called them “*representative*.”

The NPS changed this section in the Final EIS (FEIS). NPS wrote:

“NPS did not obtain noise measurements of operational DBOC equipment in Drakes Estero.” (Chapter 3, page 256)

There was no such statement in the DEIS. The DEIS is silent on why NPS did not obtain direct noise measurements of DBOC equipment. They did not claim that the cost to do so would have been exorbitant (it would not). They did not claim that it would have taken too long (it would not). All they stated in the FEIS is that they did not do so, something they failed to disclose in the DEIS. In the FEIS, they withheld the required explanation for why they did not do so. The IG accepted their violations of mandatory regulations.

4. IG REPORT ERRED IN CONCLUDING NPS PROXIES WERE APPROPRIATE: The Jet Ski Misrepresented the Oyster Skiff and the Cement Truck Misrepresented the Oyster Tumbler

DR. GOODMAN’S ALLEGATION #2

Section 3 above considered how the IG report dismissed the allegation that the NPS failed to follow Management Policies 2006 and Director’s Order #47. Instead of making direct measurements of DBOC oyster skiffs and the oyster tumbler, NPS and VHB staff used what they now call ‘proxy’ data, that is, measurements from unrelated equipment from other places (a disclosure they failed to make in the DEIS).

On page two of his 270-page submittal to Acting Inspector General Mary Kendall, Dr. Goodman alleged in point #2 (of six major allegations):

“Made false representations of key acoustic data in Chapter 3 of the DEIS.”

In specific the NPS DEIS used a Kawasaki Jet Ski (750 cc, 2-stroke, 70 HP engine) to misrepresent the DBOC oyster skiff (360 cc, 4-stroke, 20 HP engine), and a cement truck (with a loud 400 HP diesel engine) to misrepresent the DBOC plastic oyster tumbler (with a ¼ HP 12-volt electric motor). These proxies were inappropriate.

The Jet Ski measurement came from a 1995 study by Noise Unlimited, Inc. on behalf of the New Jersey State Police. In March 2012 (as today), this study was not available on the Internet. It is cited in two places (one being the Personal Watercraft Industry Association, which is where Dr. Goodman obtained his copy), but to our knowledge, the Noise Unlimited 1995 study cannot be downloaded anywhere on the Internet.

In contrast, NPS had much better proxy data, but did not use it. Of course, according to Management Policies 2006, NPS should have made direct measurements of DBOC boats and equipment. But if NPS found it necessary to import proxy data, they had the following technical study performed for NPS in 2002: "*Harris, Miller, Miller, and Hanson Report No. 295860.370: Draft Technical Report on Noise: Personal Watercraft and Boating Activities at Glen Canyon NRA. March 2002.*" This technical document played a major role in the NPS "*Final Environmental Impact Statement: Personal Watercraft Rulemaking*" for Glen Canyon National Recreation Area, 2003.

For this 2003 FEIS, NPS followed Management Policies 2006; NPS used appropriate data from the 2002 technical report containing measurements made at Glen Canyon. Why did NPS and VHB for the DEIS for Drakes Estero use the obscure Noise Unlimited study from 1995 containing measurements of Jet Skis from the New Jersey shore? Why didn't they make direct measurements of the DBOC oyster skiff as mandated by NPS policies?

And if they did feel it necessary to use proxies, why didn't they use their own more-detailed study from 2002? Dr. Goodman notified IG agent Haecker on July 23, 2012 of this technical study and the 2003 NPS FEIS for Glen Canyon, but the IG nevertheless called the use of the Noise Unlimited 1995 study as "*best available science*" (see section 8 below for discussion of "*best available science*" in the IG report).

The cement truck measurement came from a 2006 study by the U.S. Department of Transportation, Federal Highway Administration (FHWA) in their "Road Construction Noise Model (RCNM) User Guide."

The DBOC oyster tumbler can be heard for about 140 feet. Based upon the cement truck measurement (RCNM report 2006), the DEIS stated that the oyster tumbler can be heard for 2.4 miles (12,450 feet, an exaggeration of 89X or nearly two orders of magnitude).

The DBOC oyster skiff can be heard for about 400 feet. Based upon the Jet Ski measurement (Noise Unlimited report 1995), the DEIS stated that the DBOC skiff can be heard for 1.3 miles (7,062 feet, an exaggeration of 20X).

The IG report described Dr. Goodman's allegation as follows:

"The complainant alleged that either NPS or VHB used acoustical data references in the DEIS that were not accurate or applicable. He claimed that the references and proxy data used did not accurately represent the Company's equipment and that NPS or VHB overestimated the Company's sound emissions."

THE IG DISMISSED DR. GOODMAN'S ALLEGATION #2

The IG dismissed Dr. Goodman's allegation by claiming that the proxy data did indeed accurately represent the Company's equipment. Moreover, the IG stated that the proxy data actually underestimated, rather than overestimated, the Company's sound emissions. How did the IG arrive at this conclusion?

NPS and VHB call their data "proxy" data, and the IG accepted that description, never pointing out that the word "proxy" cannot be found in the 700-page DEIS. In the DEIS, NPS and VHB never told the readers that the measurements were not from DBOC equipment, and led the reader to think (see Table 3-3) that the numbers came from DBOC equipment.

The IG dismissed Dr. Goodman's allegation that the data presented by NPS in Table 3-3 of the DEIS misrepresented DBOC equipment. How did the IG conclude that all of this was acceptable? The first step, of course, was that the IG ignored Management Policies 2006 that mandated that NPS managers had to make direct measurements of human-generated sound. Putting that major violation of NPS policy aside for a moment, it is of interest to examine the reasoning used by the IG in accepting the NPS and VHB "proxies."

The IG accepted the use of these proxies, accepted these exaggerated numbers, called them "*best available science*," and said neither NPS nor VHB did anything wrong. How did the IG accept the misrepresentation of the Jet Ski for the oyster skiff and the cement truck for the oyster tumbler?

On pages 9 to 14 of the IG report, they described their reasoning in dismissing this allegation. From the outset, the title of this section of the IG report provided a sense of the IG argument:

"Allegation of the Over- and Underestimated Sound-Level Data to Represent Company Equipment"

Note the word "*underestimated*." Dr. Goodman never alleged that the proxy data was an underestimate; he clearly alleged that it was an overestimate or exaggeration of DBOC equipment. Why did the IG use this word when repeating Dr. Goodman's allegation?

The IG went on to present why the Jet Ski was in reality an underestimate of the oyster skiff noise, and the cement truck an underestimate of the oyster tumbler noise, suggesting (although not stated explicitly) that the oyster skiff can be heard for over 1.3 miles and the oyster tumbler can be heard for over 2.4 miles.

It is inexplicable how the IG accepted this explanation and made this argument. Anyone who has ever visited the oyster farm knows that the oyster tumbler can only be heard for one or several hundred feet at most. It is not a noisy piece of equipment. Many thousands of visitors have had first-hand experience with the oyster tumbler, including IG special agents Haecker and DeLaPena, and Secretary of the Interior Salazar.

IG special agents Vince Haecker and Trey DeLaPena visited the oyster farm on August 8, 2012, and at the prior request of Dr. Goodman, spent time at the oyster tumbler with Mr. Lunny while it was fully operational. They acknowledged that day to Mr. Lunny, and by phone over the next few days to Dr. Goodman, that indeed the oyster tumbler was

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct not very loud and can be heard for only a few hundred feet. In the IG report, agents Haecker and DeLaPena nevertheless accepted the explanations from NPS and VHB scientists that their own first-hand experience told them were wrong.

On Wednesday November 21, 2012, Interior Secretary Salazar visited the oyster farm. The Secretary stood next to the oyster tumbler with Kevin and Nancy Lunny while it was operating, and they had a good conversation in their normal voices (see photo below, courtesy Linda Petersen, The West Marin Citizen newspaper). Their conversation was filmed by ABC7 news, and recorded by many other news media. Their voices were easy to hear, and not disrupted by the oyster tumbler. The Secretary would have been unable to have that conversation in his normal voice if the oyster tumbler were as loud as an operational cement truck.



Since the Secretary was talking in his normal voice, he will likely be surprised to learn that the IG report accepted the NPS explanation that the oyster tumbler is actually louder than an operational (400 HP) cement truck, and is described in the FEIS as having a major impact on wildlife and visitors.

This section of the IG report is remarkable in its acceptance of every explanation – no matter how far-fetched – provided by NPS and VHB staff. Consider the following. On page 10, the IG report stated:

“The DOT developers of the [FHWA Road Construction User Guide] explained the proper use of the guide and how selections should be based

*on mechanical similarities and function, the same process that VHB appeared to follow. **The surfacing of new relevant soundscape research suggested the sound levels selected by VHB to represent Company boats were likely underestimated;** NPS' and VHB's acoustic experts plan to incorporate this new soundscape data, as well as the Environ report, once all the data have been vetted, which will better clarify the noise level ranges estimated for the Company's equipment."* [bold emphasis added]

The IG accepted the statements by NPS and VHB acoustics experts that they had “*new relevant soundscape research*” showing that the Jet Ski was an underestimate (i.e., that the skiff was louder than the Jet Ski), and that the new soundscape data would be presented in the FEIS. What was that new data that the IG accepted?

The new NPS data were found in the FEIS Appendix I. Appendix I stated on page I-1:

*“NPS comprehensively reanalyzed the PORE004 data to identify all noise events that might associated with DBOC operations and measured the events that could be **unambiguously identified** as boat noise. Noise events were detected as visible events in spectrographic images generated from the data. Experienced researchers listened to each event using headphones to confirm the identity of the noise source.”* [bold emphasis added]

A word common to and conspicuous in both Appendix I and Chapter 4 (page 443) of the FEIS is “*unambiguous*” (or “*unambiguously*” as used in Appendix I). NPS claims that their researchers conducted an intensive review listening using headphones to the two months (51 days) of audio recordings from microphone PORE004 and “*unambiguously*” detected 192 boat noise events.

Dr. Goodman analyzed Appendix I and submitted a 24-page report to Secretary Salazar on November 27, 2012 (enclosed here). Dr. Goodman showed that NPS could not “*unambiguously*” detect boat noise events, and that many of their so-called events were either false positives or false negatives. After describing his detailed analysis, Dr. Goodman wrote:

*“In summary, Table I-1, the major finding in Appendix I, contains numerous major errors and is thus incorrect and invalid. Table I-1 **contains false positives, false negatives, and over scoring of boat trips. There are very few if any numbers in this table that coincide with the GPS and boat log data (the actual data).**”* [bold emphasis added]

Dr. Goodman summarized his findings as follows:

“Appendix I is fundamentally flawed. NPS researchers claim to be able to “unambiguously” detect boat noise throughout Drakes Estero, to measure minutes of boat noise, and to estimate the level of boat noise. They also claim to be able to measure all DBOC noise from both boats and onshore equipment at microphone PORE004.

All of these NPS claims are inaccurate and invalid. As shown here, NPS cannot determine boat noise other than when the boat is in the main channel, as I already provided in my analysis on April 24, 2012. The NPS analysis has so many false positives and false negatives as to have no scientific validity. The NPS analysis of the level of sound from the boat noise is also invalid. The DBOC boats simply do not produce more than 80 dBA of noise at 50 feet. The NPS calculations are incorrect, as shown above for one example. The assumptions used in calculating the NPS estimates are wrong.

Appendix I should be disregarded and the statements concerning it in Chapter 4 should be retracted and revised. Appendix I is a poor quality analysis. NPS does not have any records of boat noise greater than 10% of the day on any day. NPS has no basis for concluding that DBOC noise generators have a major adverse impact on wildlife and visitor experience to Drake Estero.

In short, NPS has no evidence for a major adverse impact of DBOC noise on wildlife and visitor experience.

In the end, NPS should have done what NPS Management Policies 2006 and Director's Order #47 instructed them to do – NPS should have made direct measurements of noise levels of the oyster boats, oyster tumbler, and other DBOC equipment, but they did not. NEPA regulations are even more stringent on insisting that NPS gather the appropriate data. Even though the real measurements would have taken only a few hours to collect, and numerous commenters asked NPS to do so, in the final EIS, NPS wrote: "NPS did not obtain noise measurements of operational DBOC equipment."

Not making direct measurements was the fundamental flaw of the soundscape analysis in this FEIS. NPS was told of this mistake after the DEIS, but instead of making the direct measurements, they produced Appendix I. Appendix I is a very poor piece of scientific analysis that no doubt cost considerable time and effort at taxpayer expense. For all of the work that went into Appendix I, it is relatively worthless.

What is unambiguous about Appendix I is that it is incorrect and invalid. The methods employed do not allow NPS researchers to "unambiguously" measure DBOC boat events and boat noise levels. The methods do not allow NPS to measure total DBOC noise. All of these measurements are invalid. NPS should have come to the oyster farm and made the direct measurements. It would have taken less time, cost less taxpayer money, followed NPS policies and NEPA guidelines, and generated much better data."

No one at NPS or DOI ever responded to Dr. Goodman's 24-page analysis of Appendix I. No one refuted his analysis that showed numerous false positives and false negatives in the NPS data. Dr. Goodman sent his analysis to IG special agent Vince Haecker on November 27, 2012. In response to Agent Haecker wrote to Dr. Goodman

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct on November 28, 2012:

“Sorry for the delayed response, thank you for the information you forwarded; I am trying to review it as well as the Final EIS now. If I have additional questions, I will reach out to you.”

Mr. Haecker never reached out to Dr. Goodman with additional questions or comments. It is important to note that the NPS and VHB claims of new data analysis are stated in the IG report, but no mention is made in the IG report that Dr. Goodman refuted this analysis, months prior to release of the IG report.

Dr. Goodman’s analysis of Appendix I in the FEIS contradicts the comment on page 10 of the IG report that stated:

“The surfacing of new relevant soundscape research suggested the sound levels selected by VHB to represent Company boats were likely underestimated; NPS’ and VHB’s acoustic experts plan to incorporate this new soundscape data ...” into the FEIS.

In summary, the IG knew that NPS did not have conclusive data showing that the Jet Ski was an underestimate of the oyster skiff, but published the IG report regardless and accepted the statements by NPS and VHB scientists. The IG incorrectly accepted the use of the cement truck as a proxy for the oyster tumbler, and further accepted that it was an underestimate of the oyster tumbler. The IG accepted that the oyster tumbler can be heard for over 2.4 miles, when their own experience – and that of Secretary Salazar – not to mention thousands of visitors, is that the oyster tumbler can be heard for a few hundred feet.

The IG report also accepted the Jet Ski as a proxy for the oyster skiff, and further accepted that it was an underestimate of the oyster skiff. In both cases, the IG had documents in their possession, and had personal first-hand experience, to know that these statements were incorrect, months prior to release of the IG report. It is inexplicable how the IG accepted these statements by NPS staff.

How did the VHB acoustics scientists rationalize the use of these proxies for the DBOC equipment? The IG wrote on page 11:

“VHB’s acoustics representative and director of Air Quality and Noise Services ... [has] more than 40 years of sound and acoustic experience and ... was the project technical advisor for the DEIS and reviewed its soundscape sections for accuracy. He stated that during his research for this project, he personally located the NU 1995 report on the Internet and subsequently selected the watercraft measurements from the NU report to represent Company boats, which was based on information collected by VHB staff members during Company site tours.”

“... he felt the data he chose from the NU report was reliable and an accurate representative of Company boats.” [bold emphasis added]

The VHB acoustics scientist claimed, and the IG accepted, that the 2-stroke, 750 cc, 70 HP Jet Ski was a “reliable and accurate representative” of the 4-stroke, 360 cc, 20 HP oyster skiff. Regardless of his 40 years of experience, that is a scientifically incorrect

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct statement, and does not represent “*best available science.*”

The VHB senior acoustics scientist when on to discuss the cement truck and the oyster tumbler. The IG wrote on page 13:

*“He told us the selection from the RCNM to represent the oyster tumbler was based on what he felt were similarities between the oyster tumbler’s motors, operation, and function to that of a cement mixer, which was eventually selected to represent the oyster tumbler in the DEIS. VHB’s acoustics representative said, however, **the oyster tumbler was likely louder than his selection from the RCNM and what was reflected in the DEIS**, based on the sound produced by the oyster shells colliding inside the drum, unlike liquid concrete.”* [bold emphasis added]

This is a remarkable statement, asserting that the plastic oyster tumbler with a ¼ HP, 12-volt electric motor, is likely louder than a 400 HP cement truck. Regardless of this senior scientist’s 40 years of experience, this statement is inconsistent with common sense and the first-hand experience of many thousands of DBOC visitors.

How did the senior NPS acoustics scientist rationalize the use of this proxy? The IG wrote on page 12:

“We also interviewed the senior acoustics scientist at NPS’ Natural Sounds and Night Skies Division (NSD), Ft. Collins, CO. He told us he had more than 17 years in the acoustics field. He believed the proxy sound levels used to represent Company’s equipment were “slightly underestimated” because the Jet Ski noise level from the NU report was a static measurement and not a passby measurement. He said that he understood why the Jet Ski was selected to represent Company boats, as it was the “smallest” and “lightest vehicle” measured in the report.”

*“Karen Trevino, NPS’ Chief of NSD, explained that onsite noise emissions’ monitoring is the preferable scientific methodology by acoustic experts over that of modeling or using representative/proxy data. Onsite monitoring, however, is not always cost effective or feasible due to time and budgetary constraints. She explained that the use of scientific proxy data in this case, the data drawn from the NU report and the RCNM, and modeling is common practice for predicting noise levels and impacts for soundscape projects. Regarding VHB’s selection of representative equipment presented in the DEIS, **she felt the best available science at the time was used and that the proxy data selected was high quality and negated the need to collect new data.**”* [bold emphasis added]

In summary, the IG accepted statements by the VHB senior acoustics scientist, the NPS senior acoustics scientist, and the NPS Chief of the Night Skies Division, that the use of the Jet Ski to represent the oyster skiff, and the cement truck to represent the oyster tumbler, was “*best available science*” and “*high quality and negated the need to collect new data.*” The IG never asked any of the three senior scientists if they had any reason to believe that the oyster tumbler could actually be heard for 2.4 miles as stated in the FEIS, or for over 2.4 miles as now suggested by their statements that the proxy was an

underestimate. The IG knew that the oyster tumbler can be heard for only a few hundred feet. Interior Secretary Salazar knew that the oyster tumbler can be heard for only a few hundred feet. But senior scientists at NPS and VHB asserted that the proxy driving a distance of 2.4 miles (or more), and the IG accepted those statements.

5. IG REPORT ERRED IN CONCLUDING NPS DID NOT DECEIVE THE PEER REVIEWER: IG Accepted Testimony Contradicted By Documents and Emails

DR. GOODMAN’S ALLEGATION #6

In point #6 of Dr. Goodman’s complaint, he stated that NPS and VHB:

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

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

The IG described Dr. Goodman’s allegation as follows on page 28 in the section “Allegations That the DEIS Deceived the Peer Reviewers”:

“The complainant alleged NPS and VHB presented information in the DEIS in such a way as to deceive the peer reviewers. ... The complainant claimed: “These actions are consistent with a motivation to deceive the reader, and indeed one key reader, [from] (Cornell [University], the peer reviewer of this section) was deceived into believing that the NPS data were from [Company]. The complainant alleged there was a “scheme to deceive and distort the DEIS and the [Atkins] peer review came from unnamed individuals at NPS and/or VHB.”

These statements attributed to Dr. Goodman cannot be found in Dr. Goodman’s 270-page submittal to the DOI OIG. The language in his submittal was very clear. It is possible that these quotations come from the 8-hour interview of Dr. Goodman by the IG special agents, but the tape and transcript of that interview was not provided to Dr. Goodman as promised by the IG. It is puzzling why the IG did not simply quote from the 270-page submittal from Dr. Goodman.

Later on pages 28-29, the IG wrote concerning their interview with Dr. Goodman on May 16, 2012:

“[The complainant] claimed the soundscape peer reviewer had been deceived into believing the sound data came from Company equipment. ... According to the complainant, during his conversations with the peer reviewer it became evident that the peer reviewer was under the impression that all of the noise level measurements cited in the DEIS were collected onsite from the Company. The peer reviewer allegedly also believed that the NU [Noise Unlimited] citation referred to previous Company measurements and not to an acoustic project conducted for the

State of New Jersey. ... The complainant later provided his notes, transcribed minutes after his conversation with the peer reviewer, as well as emails exchanged between him and the peer reviewer, where he quoted the peer reviewer's responses to his questions about the DEIS."

It is important to note for clarity that the notes of the conversation between Dr. Goodman and Dr. Clark were written down contemporaneously during the conversation, not after the conversation. After the conversation, the hand-written notes were typed into a computer by Dr. Goodman.

IG DISMISSED DR. GOODMAN'S ALLEGATION #6

The IG dismissed Dr. Goodman's allegation #6, asserting that Dr. Clark denied not knowing that Table 3-3 contained proxy data, denied being deceived, and denied acknowledging that the Environ data changed any of his conclusions.

On page 28, the IG wrote:

*"Our investigation of the allegations that NPS deceived the peer reviewer revealed that **the peer reviewer had not been not under the impression that the sound data was derived from collections on Company equipment and he was aware the DEIS used proxy data to represent Company equipment.**" [bold emphasis added]*

The IG wrote on page 30 that they interviewed the peer reviewer, Dr. Chris Clark from Cornell University. The quotations below from the IG interview with Dr. Clark are numbered so that they can be cited later in this section. Concerning that interview, the IG wrote:

- 1) *"The peer reviewer said he peer reviewed the soundscape sections (chapters 3 and 4) of the DEIS for Atkins, and he expressed to us that in his peer review comments that there were no discrepancies with the scientific methods, aside from the noted limited amount of scientific data available on the subject matter of sound levels for commercial fishing equipment and personal watercraft." (IG report, page 30)*
- 2) *"We asked the peer reviewer if he recalled informing the complainant that he (the peer reviewer) had been deceived by the DEIS or had been led to believe that the sound data originated from Company equipment. The peer reviewer did not recall making any such comments to the complainant. He told us that he knew some of the actual data in the DEIS were representative or proxy data for Company equipment, while other information was derived from the Company." (IG report, page 30)*
- 3) *"[The complainant] told us that the peer reviewer commented that if he had been given the Environ comments earlier, it would have changed the outcome of the peer review (see Attachment 33). We asked the peer reviewer for clarification about the Environ comments; the peer reviewer did not recall making the statement the complainant alleged, nor did he recall reviewing any material that would have changed the outcome of his*

peer review (see Attachment 40). ... [the peer reviewer] reiterated the Environ data did not change his conclusions.” (IG report, page 30)

- 4) *“We told the peer reviewer that the complainant quoted him as stating: “I am not in agreement with the National Park. Given what you’ve told me about the numbers in Table 3-3 and the [Environ] report, I would conclude that there is no biological impact of the oyster farm on wildlife.” The peer reviewer was unable to recall making this statement to the complainant and said he did not agree with its conclusion.” (IG report, page 31)*
- 5) *“Overall, the peer reviewer told us, the DEIS was well done, well organized, and complete. Chapter 4’s scientific methods led him to believe that the DEIS was “robust” and the acoustics data presented appeared to have been derived using strong scientific methods.” (IG report, page 31-32)*

In summary, Dr. Christopher Clark, the peer reviewer of the soundscape section of the DEIS, claimed in his interview with the IG that Dr. Goodman did not tell the truth about what was said in his telephone conversation with Dr. Goodman on March 21, 2012. Specifically, Dr. Clark told Dr. Goodman that:

- 1) In his peer review comments he noted the limited amount of scientific data available on the comparable sound levels for commercial fishing equipment (the DBOC skiff with the 20 HP engine) and the personal watercraft (the Jet Ski);
- 2) He had known when he wrote his peer review that the data in Table 3-3 were proxy data and not actual data from DBOC equipment, he had not been led to believe that the sound data originated from DBOC equipment, he had not been deceived by the DEIS, and he never told Dr. Goodman that he was deceived;
- 3) The Environ data, once given to him, did not change his conclusions compared to his original peer review, and he never told Dr. Goodman that it did change his conclusions;
- 4) What he learned about the origin of the numbers in Table 3-3 and the data from the Environ report did not change his conclusion about the biological impact of DBOC noise generators on wildlife, and he never told Dr. Goodman that he now concluded that DBOC noise generators would not have a significant impact on wildlife; and
- 5) He continues to believe that the DEIS was well done and complete, the methods robust, and the data derived using strong scientific methods.

It was based upon those five claims from Dr. Clark that the IG dismissed Dr. Goodman’s allegation #6. Are they correct? The answer is no, as shown below from documents written by Dr. Clark or verbal statements made by Dr. Clark.

DR. CLARK WAS NOT TRUTHFUL BUT THE IG ACCEPTED HIS CLAIMS IN SPITE OF POSSESSING DOCUMENTS DISPROVING THEM

If the IG report provided an accurate account of Dr. Chris Clark's interview with the IG, then Dr. Chris Clark did not tell the truth to the IG. If the five quotations above from the IG report are accurate, then Dr. Clark did not tell the truth to the IG in multiple statements.

The evidence contradicting his statements is presented below. The evidence is largely derived from the writings of Dr. Clark himself. This is not a 'he said-she said' but rather a tale of Dr. Clark's self-contradictions.

What is more troublesome is that the IG had all of the evidence that disproved Dr. Clark's statements, but the IG accepted everything he said, failed to quote from the Dr. Clark's written documents contradicting his own statements, and gave the reader no indication that Dr. Clark's claims are contradicted by his own written words.

Dr. Clark's written statements were described in Dr. Goodman's original submittal to the OIG. The two key documents are Dr. Clark's review of the soundscape section of the DEIS in the Atkins Peer Review (March 2012), and the emails between Dr. Clark and Dr. Goodman on March 21, 2012. Statements from Dr. Clark in both are consistent with Dr. Goodman's contemporaneous and extensive notes of his telephone conversation with Dr. Clark at 8:04 am PT on Wednesday morning, March 21, 2012.

These documents are also consistent with an interview Dr. Clark gave to the press on March 21, 2012, an interview that was published the following week. The statements he made to the press contradict what Dr. Clark told the IG.

DR. CLARK'S REVIEW OF THE SOUNDSCAPE SECTION OF THE DEIS

Dr. Clark is a bioacoustics expert from Cornell University. Dr. Clark reviewed the soundscape analysis in the DEIS from (what he thought was) the oyster farm motorboats and other oyster farm equipment. Dr. Clark's peer review in the Atkins report was not quoted in the IG report. This is inexplicable, since Dr. Clark's peer review formed the basis for Dr. Goodman's allegation #6.

Below are the relevant quotes from what Dr. Clark wrote in his Atkins peer review.

In his peer review, Dr. Clark wrote:

"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."

Dr. Clark wrote that he found the NPS data "compelling." Dr. Clark then concluded:

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

In his Atkins peer review, Dr. Clark did not realize that the NPS data in Table 3-3 did not come from DBOC oyster boats (and other equipment), but rather from boats and equipment 3,000 miles away and 16 years ago. Dr. Clark did not realize that the data from the 1995 Noise Unlimited study came from a Kawasaki 750 cc 2-stroke 70 HP Jet Ski and not from from the DBOC 360 cc 4-stroke 20 HP engine on the oyster skiff. Dr. Clark's peer review clearly shows that he believed he was reviewing data from DBOC equipment collected at Drakes Estero.

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."

There is one key paragraph in Dr. Clark's review that reveals what he thought of the data he had analyzed (Atkins Peer Review, bottom page 83, top of page 84). In Dr. Clark's review of the data in Table 3-3 in Chapter 3 of the DEIS, he concluded:

*"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. It could be argued that the human noise footprints from DBOC activities could have increased since 1995, but this is never discussed.**" [bold emphasis added]*

In summary, Dr. Clark's review of the DEIS in the Atkins peer review was unambiguous. It is clear from Dr. Clark's peer review that he was not aware that the data came from 'proxies' (a word never used in the DEIS – NPS never acknowledged that they had not made direct measurements) and not DBOC equipment. Dr. Clark was not aware that the data for the boats came from personal watercraft (i.e., a Kawasaki Jet Ski) and not the DBOC stiffs, and he was not aware that the DBOC onshore equipment measurements (the forklift, pneumatic drill, and oyster tumbler) did not come from Noise Unlimited 1995, but rather came from highway construction equipment proxies from the Federal Highway Administration 2006 report. On the other hand, Dr. Clark was aware that the DBOC boat was not a large commercial fishing vessel but rather was a skiff with a relatively small motorboat engine (20 HP). Dr. Clark believed the measurements in Table 3-3 provided "sound level data for Drakes Estero" from

“specific DBOC noise sources.” He believed that the Noise Unlimited 1995 report had measured DBOC motorboat engines as well as DBOC pneumatic drills and oyster tumbler. In short, Dr. Clark was deceived. Dr. Clark’s statements in his interview with the IG are contradicted by his published Atkins peer review.

DR. CLARK’S TELEPHONE CONVERSATION WITH DR. GOODMAN

Dr. Goodman telephoned Dr. Clark at 8:04 am PT on Wednesday morning, March 21, 2012. He reached Dr. Clark in his Cornell University office. Dr. Goodman took contemporaneous and extensive hand-written notes of his telephone conversation with Dr. Clark, and after the call, typed them into his computer. These notes were submitted to the IG in May 2012.

Dr. Goodman asked:

“When you did your review, did you think you were looking at Drakes Bay Oyster Company numbers?”

Dr. Clark answer: “Yes”

Dr. Clark told Dr. Goodman that he believed that the NPS data in the DEIS came from DBOC boats and equipment at Drakes Estero. This simply confirmed what was in his written peer review.

Dr. Clark told Dr. Goodman that he “*assumed*” the data were from “*field measurements at Drakes Estero.*” Dr. Clark told Dr. Goodman: “*I was led to believe these tables were from field activities of DBOC.*” Again, this simply confirmed what was in Dr. Clark’s written peer review.

Dr. Goodman told Dr. Clark where the numbers came from, and emailed him a PDF file with citations showing that the numbers in the Noise Unlimited 1995 report came from police boats off the New Jersey shore in 1995, not from the DBOC skiffs. Dr. Goodman showed Dr. Clark that the numbers for the onshore equipment came from a Federal Highway Administration Construction Noise User’s Guide from 2006, and were from big highway construction equipment (e.g., cement trucks), and not from DBOC equipment. None of the measurements came from DBOC. This was all a revelation to Dr. Clark, and he said so. He responded with amazement.

Clark responded:

“no way!”

“I assumed these were field measurements from Drakes Estero.”

“Is this a joke?”

Clark then laughed, said he couldn’t believe it, and wondered if Dr. Goodman was pulling his leg. He commented on his amazement at the New Jersey police boat numbers, and the highway equipment numbers.

After learning the true source of the data, and the real measurements of DBOC equipment made by Environ, Dr. Clark changed his view.

Dr. Goodman asked Dr. Clark specifically about the impact on wildlife and his conclusion that the NPS data were robust and compelling and showed a major impact on wildlife.

Dr. Clark answered:

"I am not in agreement with the National Park."

Dr. Clark continued, saying given what Dr. Goodman had told him about the numbers in Table 3-3 and the ENVIRON report, he would conclude that there is:

"no biological impact of the oyster farm on wildlife."

"That is not good."

"Yes, I was led to believe these tables were from field activities of DBOC."

"I was deceived."

"I thought the tables that I was asked to evaluate represented DBOC measurements."

Dr. Goodman asked Dr. Clark:

"Why do you think they did this?"

Dr. Clark answered a question with a question.

"Why is the Park Service doing something this stupid? Why? Why are folks in Washington doing this? Do they have another agenda? This looks like a stupid political agenda."

Clark then commented that this would come back to bite them, that folks would get caught doing something stupid like this.

In summary, Dr. Clark's phone conversation with Dr. Goodman on March 21, 2012 was consistent with Dr. Clark's peer review in the Atkins report, and inconsistent with what he told the IG during his interview. Dr. Clark's written peer review is also inconsistent with and contradicts his interview with the IG.

DR. CLARK'S INTERVIEWS WITH THE MEDIA ON MARCH 21, 2012

On March 21, 2012, several reporters contacted Dr. Clark and asked him to comment on the soundscape data in the DEIS. As published online in Greenwire in an article entitled "*NPS noise data for California oyster farm based on 1995 study in New Jersey*" on March 27, 2012, Dr. Clark said the following to reporter Emily Yehle about the data in Table 3-3:

Christopher Clark, a bioacoustics expert at Cornell University, confirmed to Greenwire that he believed the table in the draft EIS on the oyster farm's sound levels "represented measurements taken from DBOC activities."

In summary, this confirms what Dr. Clark wrote in his Atkins peer review, and with his phone conversation with Dr. Goodman on March 21, and is inconsistent with what Dr. Clark told the IG during his interview. In his interview with Greenwire reporter Emily Yehle on March 21, he admitted that when he reviewed the DEIS, he believed that the data in Table 3-3 came from DBOC noise-generators.

DR. CLARK’S EMAIL EXCHANGE WITH DR. GOODMAN

On March 21, 2012, at 12:40 pm PT (around 3 hours after their phone conversation), Dr. Clark emailed Dr. Goodman. This email was one of many (the complete set) shared with the IG. However, in their report, the IG did not quote from this key email – Dr. Clark’s first to Dr. Goodman after their phone conversation. The IG selectively quoted from Dr. Clark’s emails so as not to contradict his interview with them. Dr. Clark wrote:

*“Thanks for the informative and enlightening discussion. I’ve had three calls so far all asking the same basic question as to whether the reality of where the measurements came from or the inappropriate and significantly higher noise level values (from NJ!) change my opinion as to the fundamentals of the EIS. Scientifically they would in the sense that the acoustic footprints of individual anthropogenic activities would be significantly smaller than assessed from the values in Table 3.3, but not in terms of interpreting the report’s overall presentation and conclusion, which is that DBOC activities do have a measurable acoustic influence on the acoustic scene in Drakes Estero. That said, **I do not believe that these activities have a biologically significant impact on wildlife**, but that was not something I was asked to comment on. [bold emphasis added]*

... So for the two motorboat sound levels, they too seem to have arrived in the EIS table from the New Jersey shore - correct?”

Five conclusions can be derived from Dr. Clark’s email to Dr. Goodman.

- 1) Dr. Clark found the conversation with Dr. Goodman “*informative and enlightening*,” confirming that Dr. Goodman provided insights and analysis concerning the sources of the data in Table 3-3 that Dr. Clark did not know, contradicting what he told the IG in his interview.
- 2) Dr. Clark did not know when he conducted his peer review that the data in Table 3-3 used to represent the DBOC skiffs did not come from the DBOC skiffs, but rather from the New Jersey shore. In other words, prior to the call, he did not know this was proxy data, contradicting what he told the IG in his interview.
- 3) Dr. Clark confirmed that members of the media asked him as to whether the reality of where the measurement came from (i.e., the New Jersey shore), about the inappropriate nature of those numbers, and the significantly higher noise levels of those numbers. Dr. Clark did not write that he disagreed with those questions, contradicting what he told the IG in his interview.
- 4) Given the reality of where the numbers came from, Dr. Clark wrote that the

acoustic footprint of DBOC noise-generators would be significantly smaller than in Table 3-3, contradicting what he told the IG in his interview.

- 5) Dr. Clark wrote: "... *I do not believe that these activities have a biologically significant impact on wildlife*" but acknowledged that no reporter asked him that question. This written statement confirmed what Dr. Clark told Dr. Goodman in their phone conversation, contradicting what he told the IG in his interview.

At 12:45 pm PT on March 21, 2012, Dr. Goodman briefly and quickly responded to Dr. Clark's question, replying:

On a call, so I'll be brief. (can write more later)

The motorboat numbers come from NJ police boats, not DBOC.

The equipment numbers comes from road construction equipment, not DBOC.

The real numbers from ENVIRON are much lower for the DBOC boats and equipment, by one to three orders of magnitude.

Is that what you wanted?

At 1 pm PT that same day, Dr. Clark responded:

Yes, and this is what I thought re motorboats, but wanted to be sure.

The IG had all of the emails above, but quoted from none of them.

At 1:33 pm PT, Dr. Goodman sent Dr. Clark a copy of the Environ report.

At 2:40 pm PT, Dr. Clark responded. This is the one email from Dr. Clark that the IG quoted in their report, but the IG selectively quoted from it. What is important is what they did not include. The entire email is reproduced below, with several sections in **bold**. In **black bold** is shown the quote reproduced in the IG report. In **green bold** is an intervening sentence not included in the IG report, and not represented with an ellipsis. In **blue bold** is an intervening sentence not included in the IG report, but represented by an ellipsis. It has a very interesting meaning. Finally, in **red bold** at the bottom is a key sentence not reproduced in the IG report.

Dr. Clark wrote:

Thanks for the ENVIRON info. This seems almost all about process and not about substance.

I know why one would use dBA for assessing noise effects and influences on humans. However, dBA should not be used when assessing potential effects and influences on non-humans: e.g., birds, marine mammals.

Neither the DEIS nor the ENVIRON material realistically deals with the actual sound fields experienced as a result of exposure to the different sources. The "overstated factor" column is cute, but pretty meaningless actually.

In any case, to me this is really not about the science of absolute or even relative sound fields generated by various machines and things

that humans do. There are too many horror stories on that front, and even the blatant ones mostly go unmitigated, unless humans might be harmed (This one is trivial.) Rather, it's about whether or not and just how much society values wilderness. In this case, it really doesn't matter whether the DEIS incorrectly gives 79 dBA or 65 dBA as the sound value for a "Frontend Loader." The issue is really about whether we, or whomever, decide that there are places that should be left alone in every way possible.

If the decision is to allow Drakes to continue operating, then one has to accept the fact that within that National Seashore there will be times and places when one will hear and experience things that are not natural. Furthermore, one also has to accept the fact that even if the decision was to close down the Drake operation, there would still be times and places in the Park when one would hear and experience things that were not natural - like planes from SFO, or the distant rumble of traffic.

*So I'm not really sure what all the fuss is about, really. **Was this deliberate, or just the result of someone cutting and pasting and not understanding sound, sound levels, dBA etc.?** The DEIS did not choose a preferred alternative. What's next?*

The sentence the IG deleted with the ellipsis is very interesting: “*this one is trivial.*” Dr. Clark was referring to the impact of DBOC noise-generators on the environment and wildlife. Why did the IG delete this sentence? Clearly, it contradicted what Dr. Clark wrote in his Atkins peer review, and contradicted what Dr. Clark told the IG in his interview.

The IG also did not include the red bold sentence at the end in which Dr. Clark asked whether the misrepresentation of the soundscape data was done deliberately or simply was the result of incompetence. This contradicted the description the IG report gave of his interview with the IG. In his interview, he claimed there was no misrepresentation, and that everything was first-rate and properly done. Yet at the time, he asked Dr. Goodman in writing whether NPS engaged in deception or incompetence.

Dr. Goodman and Dr. Clark had a few more email exchanges. The IG report reproduced part of a lengthy email from Dr. Goodman. Then on the next morning (March 22, 2012) at 9:47 am PT, Dr. Goodman sent Dr. Clark the Noise Unlimited 1995 report which he had finally gotten a copy of (contrary to what is written in the IG report, the Noise Unlimited 1995 report could not, at the time, be downloaded from the internet despite repeated attempts to find it – the Personal Watercraft Association in Washington DC provided a copy of the Noise Unlimited report).

Dr. Goodman wrote:

I finally found the 1995 Noise Unlimited study that was cited for the DBOC 20 and 40 hp oyster boat noise measurements at 50 feet.

The purpose of the study was to measure noisy speedboats on the New Jersey shore to set sound limits. The 71 dBA measurement came from a 1993-1995 Kawasaki jet ski 750 CC, 2-stroke, 70 HP engine at 2 feet.

I am speechless. This is a level of deception the likes of which I have never seen. The 71 dBA measurement was from an old very loud jet ski.

You suggested in your report that perhaps the oyster company boats and equipment made more noise in 2012 than in 1995, and you recommended a "sound source verification." Chris -- just the opposite.

What do you think now about the "data" the NPS gave you to analyze, and released the public and elected officials to represent the oyster farm soundscape in Drakes Estero? A 1993-1995 750 CC 2-stroke jet ski and large Federal highway construction equipment.

Dr. Clark never responded. As of March 22, Dr. Clark never emailed or answered Dr. Goodman again.

In summary, what Dr. Clark said and wrote to Dr. Goodman on March 21, 2012, and said to Emily Yehle in his interview on March 21, 2012, contradicts what he told the IG during his interview. Dr. Chris Clark acknowledged that:

- 1) When Dr. Clark said NPS data were "*robust*" and "*compelling*," he believed the numbers were from oyster farm boats and equipment at Drakes Estero;**
- 2) Dr. Clark did not know the numbers for oyster boats came from New Jersey State Police 1995 measurement of Kawasaki 750 cc, 2-stroke, 70 HP Jet Ski;**
- 3) Dr. Clark did not know the numbers of oyster equipment came from Federal highway administration measurements of construction equipment;**
- 4) Dr. Clark believed the use of the measurements from other places was "*inappropriate*" and "*misleading*";**
- 5) As a scientific reviewer of the DEIS, Dr. Clark believed that he was "*deceived*" and said so;**
- 6) Scientifically, Dr. Clark's opinion would change "*in the sense that acoustic footprints of individual anthropogenic activities would be significantly smaller than assessed from the values in Table 3.3 ...*"**
- 7) Dr. Clark does "*not believe that these activities have a biologically significant impact on wildlife ...*"**

DR. CLARK'S WRITTEN PEER REVIEW, WRITTEN EMAILS, PHONE CONVERSATION WITH DR. GOODMAN, AND INTERVIEWS WITH THE MEDIA CONTRADICTED THE STATEMENTS REPORTED BY THE IG

The IG had the Atkins peer review report that included the review of the soundscape section written by Dr. Clark. Moreover, they knew the relevant sections, and how Dr. Clark's views had changed. All of this was documented in detail in Dr. Goodman's 270-page submittal to the IG. The IG also had Dr. Goodman's notes of his conversation with

Dr. Clark on March 21, 2012, and copies of all of the emails between Dr. Clark and Dr. Goodman on March 21 and 22, 2012. The March 27, 2012 Greenwire story, including an interview with Dr. Clark, was a matter of public record.

In the IG report, Dr. Clark contradicted himself and the written record. Based upon Dr. Clark's five claims, the IG dismissed Dr. Goodman's allegation #6. Below each claim is shown in black, and Dr. Clark's statements that contradict each claim are shown in blue.

The IG report quoted Dr. Clark statements to them as summarized below:

- 1) In his peer review comments he noted the limited amount of scientific data available on the comparable sound levels for commercial fishing equipment (the DBOC skiff with the 20 HP engine) and the personal watercraft (the Jet Ski);

The IG should have known that this statement was incorrect. Dr. Clark made no such comment in his peer review comments in the Atkins report. He commented that the DBOC skiff had a small 20 HP engine. In his peer review, he stated his belief that the data were robust, and simply suggested that the measurements of DBOC equipment from 1995 might not apply to 2012. He wrote: "*It could be argued that the human noise footprints from DBOC activities could have increased since 1995, but this is never discussed.*" He made no mention about personal watercraft. He knew knowing about the Noise Unlimited 1995 report including measurements of fast, loud boats off the New Jersey shore for the New Jersey State Police. He did not know that the numbers in Table 3-3 came from a Kawasaki Jet Ski measured 3,000 miles away from Drakes Estero in 1995.

- 2) He had known when he wrote his peer review that the data in Table 3-3 were proxy data and not actual data from DBOC equipment, he had not been led to believe that the sound data originated from DBOC equipment, he had not been deceived by the DEIS, and he never told Dr. Goodman that he was deceived;

The IG should have known that this statement was incorrect. Dr. Clark's written peer review is clear – he thought the data in Table 3-3 came from a Noise Unlimited 1995 study of the oyster boats and equipment at Drakes Estero. Nowhere in his peer review does he mention that the data come from proxies. Nowhere does he mention that the data come from a Jet Ski off the New Jersey shore, or highway construction equipment. His written peer review is clear on this issue, as is his phone conversation with Dr. Goodman, his interview with Greenwire, and his subsequent emails. In the emails after his phone conversation with Dr. Goodman, he asked to make sure that he properly understood that the data came from the New Jersey shore and not DBOC. In fact, Dr. Goodman did not learn until the next day that the data from the Noise Unlimited 1995 report were from a Kawasaki Jet Ski. All of this is consistent with Dr. Goodman's notes of the phone conversation quoting Dr. Clark as acknowledging that he had been deceived. This is also consistent with Dr. Clark's email in which he asked Dr. Goodman if these misrepresentations were deliberate.

- 3) The Environ data, once given to Dr. Clark, did not change his conclusions compared to his original peer review, and he never told Dr. Goodman that it did change his conclusions;

The IG should have known that this statement was incorrect. In his email to Dr. Goodman on March 21, 2012, Dr. Clark wrote concerning the Environ data: *"I've had three calls so far all asking the same basic question as to whether the reality of where the measurements came from or the inappropriate and significantly higher noise level values (from NJ!) change my opinion as to the fundamentals of the EIS. Scientifically they would in the sense that the acoustic footprints of individual anthropogenic activities would be significantly smaller than assessed from the values in Table 3.3, but not in terms of interpreting the report's overall presentation and conclusion, which is that DBOC activities do have a measurable acoustic influence on the acoustic scene in Drakes Estero."* Thus, Dr. Clark did tell Dr. Goodman that the Environ data would change his scientific conclusions, in this case of the size of the acoustic footprint of DBOC noise-generators.

- 4) What he learned about the origin of the numbers in Table 3-3 and the data from the Environ report did not change his conclusion about the biological impact of DBOC noise generators on wildlife, and he never told Dr. Goodman that he now concluded that DBOC noise generators would not have a significant impact on wildlife; and

The IG should have known that this statement was incorrect. The IG quoted from Dr. Goodman's notes of his phone conversation with Dr. Clark. Dr. Clark denied making the statement, and said he would not have made such a statement. The implication was that Dr. Goodman had lied to the IG. But Dr. Clark did make such a statement twice on March 21, 2012, once verbally on the telephone, and the second time in writing to Dr. Goodman. The IG failed to point out that Dr. Clark made nearly the identical comment in his March 21, 2012 email to Dr. Goodman. In his Atkins peer review, Dr. Clark wrote: *"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."* However, in his March 21, 2012 email to Dr. Goodman, after seeing the Environ data, Dr. Clark wrote: *"That said, I do not believe that these activities have a biologically significant impact on wildlife, but that was not something I was asked to comment on."* Dr. Clark was citing the fact that the media who had called him that morning (including Emily Yehle from Greenwire) had not explicitly asked him if his conclusions about the impact of DBOC equipment on wildlife had changed, and thus he was writing this statement to Dr. Goodman, but had not said as much to the media. The IG had this email, and failed to cite it in the IG report. Dr. Clark was either not truthful in his interview with the IG,

and the IG had an email or the IG misrepresented his interview. The IG was in possession of an email from Dr. Clark in which he contradicted his own statement to the IG.

- 5) He continues to believe that the DEIS was well done and complete, the methods robust, and the data derived using strong scientific methods.

The IG should have known that this statement was incorrect. Towards the end of one of his emails to Dr. Goodman, Dr. Clark wrote: “*Was this deliberate, or just the result of someone cutting and pasting and not understanding sound, sound levels, dBA etc.?*” Those are hardly the words of someone who believes the DEIS was well done, the methods robust, and the data derived using strong scientific methods. Rather, Dr. Clark asked Dr. Goodman whether the misrepresentations of data were done deliberately, or whether they were due to gross incompetence.

In summary, a careful examination of Dr. Clark’s peer review in the Atkins report and his written emails to Dr. Goodman leads to the conclusion that Dr. Clark he did not tell the truth in his interview as reported by the IG. Moreover, the IG should have known that Dr. Clark was not being truthful. In addition, Dr. Goodman’s contemporaneous notes of his phone conversation with Dr. Clark, and Greenwire’s published account of their interview with Dr. Clark are all consistent with Dr. Clark’s peer review and his emails with Dr. Goodman, and inconsistent with the statements made to the IG.

Based upon Dr. Clark’s peer review, and his written emails, the IG should have concluded that Dr. Clark was indeed deceived by the soundscape section of the DEIS. Why Dr. Clark was not honest with the IG we do not know. It is inexplicable why the IG accepted Dr. Clark’s interview statements, given that the written record in his peer review and emails (both of which the IG quoted in their report) contradicted what he told them. How did the IG justify reporting on Dr. Clark’s interview without citing Dr. Clark’s contradictory written statements?

6. IG REPORT STRAW MAN ARGUMENT #1: IG Allegation Concerning NPS Staff Conflicts of Interest is Not From Dr. Goodman’s Complaint

Example of allegation that IG claimed Dr. Goodman made, but that he did not make:

(7) “... NPS and VHB staff failed to recuse themselves from the DEIS project, despite the appearance of conflicts of interest.”

Nowhere in Dr. Goodman’s 270-page complaint did he state that NPS and VHB staff involved in preparing the EIS had conflicts of interest. This issue raised by the IG is one of many straw man arguments in the IG report.

Rather, in Dr. Goodman's complaint filed with DOI OIG Acting Inspector General Kendall, he stated that NPS Scientific Integrity Officer (SIO) Dr. Gary Machlis and DOI SIO Dr. Ralph Morgenweck should be disqualified from involvement in the investigation because both had multiple conflicts, as detailed in Dr. Goodman's complaint. This was not one of his six major allegations involving the soundscape analysis in the DEIS.

Dr. Goodman submitted eleven specific questions for the IG to ask Drs. Machlis and Morgenweck with regard to their conflicts before allowing them to be involved. Nowhere in the IG report is anything said about Drs. Machlis or Morgenweck, their answers to those eleven questions, or whether they were or were not involved in this investigation.

It is unclear whether Drs. Machlis and/or Morgenweck participated in this investigation. In April and May 2012, the IG informed Dr. Goodman that Dr. Machlis and possibly Dr. Morgenweck would be involved in the investigation and was also informed that they would be meeting with Dr. Goodman in California in the near-term. They never came out. Later, when Dr. Goodman asked to get together with them for a face-to-face meeting to discuss both their potential conflicts and the NPS science, neither they nor the IG responded and no meeting ever took place.

While never responding to Dr. Goodman's allegation that Drs. Machlis and Morgenweck were conflicted, the IG instead responded to a so-called allegation concerning a conflict of NPS staff involved in the DEIS – one that Dr. Goodman never made.

The IG presented a straw man argument (one of many) in the section on "*Allegations of Conflict of Interest*" on pages 39-41. None of these allegations attributed to Dr. Goodman by the IG can be found in Dr. Goodman's 270-page complaint filed with the DOI OIG. This is a misrepresentation of Dr. Goodman's complaint, claiming he made an allegation (that he did not), and then responding to it as if he had. This is misleading.

For example, this 'conflict' allegation is attributed to "*the complainant and Lunny*" in the first sentence of the allegation on page 39. Mr. Lunny did not file the complaint with the IG. He was interviewed as part of the investigation. It was Dr. Goodman who filed the formal complaint, and it was focused on the soundscape section of the DEIS. The complaint was 270 pages long. Surely, the IG had its hands full focusing on Goodman's actual complaint as submitted (and, as indicated above, did not consider several of his key allegations). Why did the IG allocate time, energy, and attention to an allegation that Dr. Goodman never made?

In the final paragraph on page 40, and the first three paragraphs on page 31, the IG described how NPS staff Natalie Gates, originally designated by NPS to serve as EIS coordinator, was evidently not conflicted, even though Goodman and Lunny had supposedly asserted she was. Interestingly, this section is different from nearly all other sections of the IG report in that the names are not redacted. Natalie Gates is named, rather than simply identified by her NPS position. Also named are Lunny, PRNS Superintendent Cicely Muldoon, and ABC7 producer Ken Miguel. Why did the IG redact names in other sections, but reveal them here? This section is written differently from most of the IG report and is not in response to Dr. Goodman's complaint.

The IG wrote on pages 40-41:

“Lunny claimed Gates had made statements to the local ABC News channel for San Francisco that the Company had a negative impact on the environment and that the business “must go.” Lunny claimed he addressed this issue with Muldoon and Gates and was told that no conflict existed; he said that Muldoon asked Gates, in Lunny’s presence, if she felt conflicted and Gates said no.

An online article by ABC7 News San Francisco, dated May 21, 2010, quoted Gates as saying: “The oysters are actually extracting a lot of nutrients that a lot of other species depend on.” The article adds: “Natalie Gates says research done by and on behalf of the park shows the oyster farm is having an impact on the Estero and needs to go.”

“We interviewed Gates, who told us she served as the coordinator at the onset of the EIS project between Point Reyes and EQD for approximately 3 months; Point Reyes management then assigned someone to be the full-time EIS coordinate. ... She denied hearing or being a part of any conversations about NPS’ intent to terminate the Company’s lease.

Regarding her interview with ABC7 news and the alleged quote that the Company “needs to go,” she explained she was interviewed by Ken Miguel of ABC and once the story went public, she noted she had been misquoted. She said that she never made the “needs to go” comment.” Gates said the story was riddled with misquotes and typos, which NPS brought to ABC’s attention; she told us that ABC corrected some of the information, but not her misquote. She claimed that ABC refused to provide copies of the video or audio where she supposedly made the statement and that NPS and ABC have been unable to resolve the matter.”

This single topic took up one entire page of a 42-page report. This is nearly as much space as the IG took to refute Goodman’s major allegation that NPS and VHB failed to follow NPS Management Policies 2006 and Director’s Order #47.

Goodman never alleged that Natalie Gates was conflicted. In fact, this entire section is odd, since Goodman made none of these allegations. Why is this section concerning Natalie Gates’ interview with ABC7 in this IG report? Who inserted it and why?

This issue was raised with NPS by Senator Dianne Feinstein. The issue was also raised with NPS by DBOC owner Kevin Lunny. But the issue was not raised with NPS by Dr. Goodman or with the IG in his 270-page complaint.

According to Mr. Lunny, the reason he objected to Ms. Gates’ involvement in the EIS is that Superintendent Muldoon represented that Gates had not been involved in the DBOC issue. That was inaccurate. Not only was she involved, but she testified before the Marin County Board of Supervisors on May 8, 2007 as to the environmental impacts caused by DBOC. NPS misrepresented Gates’ role – that was the conflict.

The IG could have watched the video of the May 8, 2007 Marin County Board of Supervisors hearing in which Natalie Gates testified against DBOC (right after Superintendent Don Neubacher and Dr. Sarah Allen testified and made a series of false

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct claims), and presented (since discredited) evidence why DBOC had a negative impact on the environment in Drakes Estero.

That testimony was based upon the discredited claims in the NPS Drakes Estero Report – a NPS report taken off the internet a few months later in July 2007 because of errors and misrepresentations.

7. IG REPORT STRAW MAN ARGUMENT #2: IG Allegation Concerning Number of DBOC Boat Trips is Not From Dr. Goodman's Complaint

THE DQA FILING IN AUGUST 2012 AND THE ORIGINS OF THIS ISSUE

The second allegation addressed in the IG report is found on pages 14-19: "*Allegations Of Falsely Represented Percentage of Use by the Company/Availability of Key Information.*" The IG response to this allegation consumed a significant part of the IG report – 5 pages (12% of the entire report).

The problem is that Dr. Goodman never made this allegation in his April 24, 2012 270-page submittal to Acting Inspector General Mary Kendall. This was a straw man argument.

In the first paragraph of the IG response to this so-called allegation, the IG wrote:

"The complainant and the Data Quality Act (DQA) complaint alleged the DEIS falsely represented the percentage of use of Drakes Estero by Company boats. ... The DQA and the complainant also alleged that the Company's GPS boat data would "irrefutable demonstrate" that the percentage of use in the DEIS is 'exaggerated and misleading," and the number of boat trips into Drakes Estero was overestimated, which led to an assessment of a major impact on the Point Reyes soundscape." (page 14) [bold emphasis added]

This is the first time in the report that the IG mentioned the Data Quality Act (DQA) complaint. No introduction is given to the law, who filed the complaint, when it was filed, or the purpose of the filing. The IG failed to distinguish between a DQA and Dr. Goodman's pending misconduct complaint. The manner in which the DQA filing was conflated with the misconduct complaint would confuse any reader, and by its presentation, created the impression that the DQA complaint and the misconduct complaint were one in the same thing (or at least both involved allegations of misconduct). The IG then dismissed the allegations of misconduct. This was a straw man argument.

The DQA, passed by Congress in December 2000, directed the Office of Management and Budget (OMB) to issue government-wide guidelines that "*provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information)*

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct *disseminated by Federal agencies.*" It has nothing to do with misconduct, fraud, or abuse, but rather is focused on ensuring the quality, objectivity, and integrity of information disseminated by Federal agencies.

On April 24, 2012, Dr. Goodman submitted a 270-page misconduct complaint to Acting Inspector General Mary Kendall focused on six allegations of misconduct. Dr. Goodman submitted 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.

On August 7, 2012, Cause of Action, a Washington, D.C. nonprofit focused on government accountability, submitted a 71-page Data Quality Act (DQA) complaint to NPS on behalf of Kevin and Nancy Lunny and Dr. Corey Goodman. That DQA complaint was explicitly not a misconduct complaint (and was not filed with the OIG). Rather, under the DQA, a request was filed with NPS for "*statements to be corrected*" by NPS in the Final EIS (FEIS).

In Dr. Goodman's misconduct complaint, he neither mentioned nor alleged that NPS and VHB staff greatly exaggerated the number of DBOC boat trips to derive a finding of a major adverse impact of soundscape. Rather, in the DQA, Cause of Action, of behalf of Dr. Goodman and the Lunnys, petitioned NPS to correct the record in the final EIS.

In brief, the DEIS used a number of 12 boat trips per day (and 40-minutes per trip that the engine was running), whereas the DQA argued that the real number was around one boat trip per day. It was, to be sure, a critical error in the DEIS, and one that altered the outcome of the FEIS by driving one of the two findings of major adverse impact.

The DQA put NPS on notice that the DEIS contained incorrect numbers and statements, something NPS failed to correct in the FEIS.

THE IG ASKED DR. GOODMAN QUESTIONS ABOUT THE DQA FILING

The DQA was submitted on August 7, 2012. On August 13, IG special agent Vice Haecker emailed Dr. Goodman that he had "*received a copy of the DQA and have been going over it.*" On Thursday morning, August 16, at 8 am PT, Dr. Goodman and Mr. Haecker talked by phone. Mr. Haecker asked Dr. Goodman about the issue concerning the number of boat trips per day as found in the Cause of Action DQA filing, and asked Dr. Goodman for the data that supported that "recommended correction" in the FEIS.

Mr. Haecker referred to page 25 of the DQA, section 7.1.3: "Claims Regarding Frequency and Duration of DBOC Boat Trips." The DQA quoted the "statements to be corrected," proposed "recommended correction," and provided the following supporting statement:

"7.1.3.1 Claims Exaggerating the Frequency and Duration of DBOC Boat Trips are Demonstrably False and Not Based on the Most Current Information Available.

These claims are not accurate and are not based on the most current information available, as required by NPS's information-quality

guidelines. 134 GPS data measuring speed, location, time, and direction of DBOC boat trips starting in 2009 irrefutably demonstrate that these statements are exaggerated and misleading: neither of DBOC's small oyster skiffs has made twelve (12) 40-minute trips on any one day.

NPS was aware of and had access to three kinds of data regarding DBOC boat trips that pertained directly to the DEIS's analysis: (1) DBOC logs of boat trips; (2) DBOC GPS records of boat trips; and (3) NPS time- and date-stamped photographs and detailed logs of DBOC boat trips. 136 None of those records, which were collected over a several-year period, show "up to 12 40-minute boat trips/day." Instead, with respect to boat trips to tend the oyster bags at sandbars OB and UEN, the DBOC logs, DBOC GPS data, and NPS photographic data show an average of one trip per day (six days per week); at times, two trips in a single day; and, on very rare occasions, as many as three trips in a single day."

Nowhere was the DQA a complaint alleging misconduct, or an investigation into misconduct. Rather, the DQA was a petition to correct errors in NPS data and statements in the then-pending FEIS.

On August 16, 2012, Dr. Goodman responded to Mr. Haecker's request by email and included several documents:

"Here are the NPS logs of the 2009 photographs from March-May (pupping season). DBOC had no idea they were being photographed, so this 3-month period is about as good a set as you can get. Look at pages 1-7 of the PDF of the log.

The PDF of the 3-month calendar shows you the number of trips per day to the OB/UEN area.

Data was collected for 66 days. There were 46 boat trips, or 0.7 trips/day (pretty close to the 1/day I estimated to you).

Note there were 32 days with no boat trips, 22 days with 1 boat trip, and 12 days with 2 boat trips (and none with 3 or more).

The GPS records show the same kind of pattern. But these are NPS data -- right from their own detailed logs of the 281,000 photographs.

This is completely consistent with what the Cause of Action folks wrote in their DQA. Again, this is NPS data, not DBOC data."

On August 17, Mr. Haecker wrote back and stated:

"We have both stated in the past we are visual people, so I researched and attached maps of the camera angles NPS reportedly used as well as a map of all the DBOC beds and racks. After comparing the maps and the handwritten logs you sent me, it appears the logs focused primarily on DBOC trips to OB, UEN and UEF (prevalent harbor seals haul outs areas) and don't document the trips to the various other beds or racks in the Estero, such as 4, 33, 34, 35, which could have been due to limited field of

vision as depicted in the NPS map? Several of the log entries simply say "boat" or "boat stopped", what do you make of those annotations, since no location is specified? On all days there are several hour gaps of no annotations, does this indicate no boats are present, or that they randomly sampled and annotated what they observed?"

Later that same day (August 17), Dr. Goodman responded to Mr. Haecker:

*"(1) Yes, log pages 1-7 are for the camera looking down the lateral channel at OB and UEN, the prevalent harbor seal haul-out areas near the oyster boats/workers (i.e., 600-750 yards away). I was clear in saying that the numbers I gave you from their logs were for that location. Yes, there are other boat trips to harvesting sites much further away -- sites closer to Schooner Bay and into Home Bay. Those sites are typically 1/2 to 1 mile away. There are indeed a number of boat trips to those locations as well. I did not count those, but you and I could -- from GPS and from photos (there is another camera pointed in that direction). But here is the logic. When the sound of the oyster boat as described in the DEIS went for 1.3 miles, then you could consider the estero as a single location or a single wildlife population. But, when you consider that the real measurements show that the boat noise only goes for around 400 feet, or 800 feet when ambient is a bit lower (i.e., less windy), then you have to consider each area of the estero as its own percent calculation. Please let me know if this does not make sense to you. In other words, when they used the exaggerated distances for sound to dissipate, then you could add up all of the boat trips, because wildlife or people in any one location could hear them all. But when you consider a radius of 400 feet or so around the boat, then you have to consider percent of time as based upon that given area. As such, the most sensitive area -- and the other everyone talks about -- is UEN and OB near the seals. **For that area, the numbers I gave you are 0.7 boat trips/day.** I'd be glad to work with you on the GPS and camera photos for the other Schooner Bay/Home Bay area as well. I don't think we will get dramatically different numbers. **If a boat in Home Bay cannot be heard at OB, and a boat at OB cannot be heard at Home Bay (they are over one mile apart), given the real sound levels, then surely we cannot consider Home Bay and OB [as] a single location for percent time measurements. Each is its own area, and each must be considered separately.** This is why the distances for sound to dissipate as so important -- and so exaggerated -- in the DEIS.*

(2) The log entries are quite accurate. I've personally gone thru quite a few days, and the staffer who made the logs got all of the boat trips spot on. If there is a day with no entry (and also no entry saying that the camera was not working -- which is where I marked days as question marks), then there were no boat trips. Come on down again to my ranch to visit, and we can look at the photos together and ground truth this conclusion. I'd be glad to go over them with you.

(3) Entries that say "boat" or "boat stopped." Let get on the phone and look at specific entries together. I have a very good sense of what they mean. Moreover, I can go to the photos and send you the precise photos for those minutes so you can see for yourself.

(4) There is nothing random about the sampling. It is complete. Amazingly, Dr. Sarah Allen had staff and volunteers go through every photo, one by one, and note when the boats and workers came and went. It was an incredible amount of work. They went through over 200,000 photos. What is remarkable, given all of that work and all of that data (i.e., boat trips, time spent working on sandbars, disturbances by kayakers), is that the DEIS discarded the 281,000 photos (without mentioning the logs) in one sentence, saying that they did not have official protocols. They had clear instructions from Dr. Allen. They knew what they were doing. They told Field Solicitor Gavin Frost that they knew what they were doing (seeing his interview with Sarah Codde who was in charge of the cameras). But the DEIS dismissed this data set.

Let's discuss once you have digested my answers. I hope they help. There is nothing random to this log -- it is complete for those months. It is an amazing data set. (bold emphasis added)

Mr. Haecker responded three days later concerning another issue, but never responded further concerning the issue of the number of boat trips. Nothing is said in these emails about allegations of misconduct. The word 'misconduct' is not used in this exchange by Dr. Goodman. Nothing is said in these emails about Dr. Goodman's April 4, 2012 misconduct complaint. All of this is referring to the August 7, 2012 DQA.

In summary, the DQA complaint – filed four months after Dr. Goodman's misconduct complaint – was not a misconduct complaint, was not filed with the DOI OIG, and did not request an investigation of misconduct. Rather, it was a filing with NPS, and it was a request to correct statements and representations of data in the FEIS.

NPS was 'on notice' as to their errors. Correcting those errors would change their finding of a major adverse impact in the FEIS. The IG, without explanation, merged or conflated the DQA into the misconduct complaint, asked and was provided explanations, and then ignored them while dismissing the straw man allegation.

NPS DIRECTOR JON JARVIS REFUSED TO RESPOND TO THE DQA AND REFUSED TO CORRECT THE FEIS

On August 7, 2012, Cause of Action filed a 71-page comprehensive Data Quality Act (DQA) complaint with NPS concerning the scientific misrepresentations in the Draft Environmental Impact Statement (DEIS). On October 3, 2012, NPS rejected the DQA (also known as Information Quality Act or IQA) complaint, not based on its scientific merits, but rather "as a matter of discretion" that they could and did dismiss in its

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct entirety.

NPS asserted that it did not have to pay attention to the DQA complaint and correct statements and representations of data in the FEIS. In fact, the incorrect statements concerning the number of DBOC boat trips per day remained in the FEIS, and continued to lead to the incorrect finding of a major adverse impact of soundscape.

Cause of Action then appealed the rejection on October 16, 2012. Director Jon Jarvis denied their appeal on December 21, 2012. An analysis of Director Jarvis' rejection of the DQA complaint can be found in appendix section 10 in this report.

THE IG FALSELY ATTRIBUTED THE DQA ISSUE OF THE NUMBER OF BOAT TRIPS TO DR. GOODMAN'S MISCONDUCT COMPLAINT

While NPS refused to respond to the substance of the DQA complaint, the IG did respond in their report, focused more on the process of whether Kevin Lunny had or had not made his data available to the NPS, and less on the substance of whether the data used in the DEIS was correct or not – the focus on the DQA. The IG responded to the issue of DBOC boat trips raised in the DQA as if it was one of Dr. Goodman's major allegations of misconduct, which it was not, and spent five pages dismissing that straw man allegation.

In the first paragraph of the IG response to this so-called allegation, the IG wrote:

"The complainant and the Data Quality Act (DQA) complaint alleged the DEIS falsely represented the percentage of use of Drakes Estero by Company boats. ... The DQA and the complainant also alleged that the Company's GPS boat data would "irrefutable demonstrate" that the percentage of use in the DEIS is 'exaggerated and misleading,' and the number of boat trips into Drakes Estero was overestimated, which led to an assessment of a major impact on the Point Reyes soundscape." (page 14)

The IG wrote:

"The DQA complaint stated that NPS knew of and had access to three separate forms of data for Company boat trips that relate directly to the DEIS' analysis regarding the Company's percentage of use. These consist of Company boat trip logs, Company GPS records of boat trips, and NPS time and date stamped photos and observer logs of Company boat trips. The complainant and the DQA complaint claimed: 'None of those records, which were collected over a several-year period, show 'up to 12 40-minute boat trips/day.'" (page 16)

This quotation in the IG report is from the August 7, 2012 DQA complaint, not from Dr. Goodman's April 24, 2012 misconduct complaint.

"The complainant told us he reviewed the NPS photographs, observer logs, and calendars; by his calculations the Company boats made 0.7 trips

per day into the Estero. The observer logs and calendars covered a 66-day observation period from March to May 2008. The complainant's review, which was also documented in the DQA complaint, estimated that, on average, Company boats traveled into Drakes Estero an "average of one trip per day (six days per week); at times, two trips in a single day; and, on very rare occasions, as many as three trips in a single week."
(page 18)

The comment at the beginning of this paragraph is from the email exchange between Dr. Goodman and Mr. Haecker, in response to Mr. Haecker's questions about the DQA. The quotation at the end of the paragraph is not from Dr. Goodman's April 24, 2012 misconduct complaint, but rather from the August 7, 2012 DQA submitted by Cause of Action. Note that the quotation contains a typographical error: the correct ending is "... as many as three trips in a single day" not "...in a single week."

"The complainant alleged the NPS photos offer an equally valuable data set to determine the percentage of use. The NPS photos, however, were collected only during harbor seal pupping season, and so a 9-month data gap exists for each year. These gaps would need to be filled to estimate the Company's number of boat trips per day and year (percentage of use). In addition, the NPS camera angles were set to a limited field of view; therefore, the photos cannot account for every area visited by Company boats beyond the cameras' view."

This was the final paragraph of the five-page section in the IG report, and sets forth the IG's arguments in support of the NPS number in the DEIS. In the DEIS (and FEIS), the NPS claimed that DBOC boats make 12 trips per day (20 minutes out, 20 minutes stopped, and 20 minutes back), 365 days per year, and from that percentage usage, and the misrepresented level of boat noise (based upon the Kawasaki Jet Ski measurement from Noise Unlimited 1995), claim to have reached the threshold for a major adverse impact in the soundscape section. The NPS based their use of the number 12 to represent every day of the year came from their interview with Mr. Lunny in which he characterized 12 as the maximum and zero as the minimum number of boat trips per day (to all parts of the estero) that he could remember over the past seven years.

Dr. Goodman based his analysis on data including the March-May 2009 NPS photographs from the secret cameras and detailed NPS logs, the DBOC GPS, and the boat log records. Dr. Goodman, based on a review of NPS data, concluded, that DBOC boats made approximately one boat trip per day (specifically he calculated 0.7 boats trips per day) during a typical work week.

In the final paragraph of this section, the IG made two arguments to refute Dr. Goodman's number. Both IG arguments are weak and fallacious.

First, the IG argued that the NPS cameras did not see all oyster harvesting areas. That is correct, but they did see all of the harvesting areas within possible hearing of the harbor seals, and within the spread of the noise of the DBOC boats in that area. In other words, the harvesting areas much further away and out of the camera angles are independent areas that required independent calculations of noise and time. Moreover,

even if the cameras missed a small number of boat trips, that would only bring the number from 0.7 to perhaps 1.0, and not to the 12 used in the DEIS and FEIS. Dr. Goodman had already articulated this answer to Mr. Haecker in his email on August 17, and Mr. Haecker had not responded. On August 17, Dr. Goodman wrote:

“If a boat in Home Bay cannot be heard at OB, and a boat at OB cannot be heard at Home Bay (they are over one mile apart), given the real sound levels, then surely we cannot consider Home Bay and OB [as] a single location for percent time measurements. Each is its own area, and each must be considered separately.”

Second, the IG argued that Dr. Goodman’s calculations were based on only the March-May pupping season and did not include the other nine months of the year. This is correct for the photographs and logs, but not for the DBOC boat log records and GPS records which corroborate the same number of boat trips. Moreover, during the rainy and storm season (November-February), there would be many fewer boat trips, not more trips. Had the IG asked Mr. Lunny, they would have learned that the number of boat trips is fairly constant during the year, except for during storms in the rainy season when there would be fewer trips. The IG never fact-checked these numbers with Mr. Lunny. Finally, DBOC boats do not typically operate on Sundays or Mondays.

If for the sake of argument, we assume that the NPS and the IG numbers are correct, and that the total is actually 12 boat trips per day, and given that the number during the pupping season is only around 1 per day, then for the remaining 9 months of the year, the number would have to be 16 per day, seven days per week. If we then consider that the boats only operate five days per week, the number goes up to 22 boat trips per working day.

That is an absurdly high number. It is arithmetically impossible. It would require both DBOC boats working on the estero constantly, every hour of every day from dawn to dusk, going out and coming back in constant boat trips, every working day of the year, and giving little or no time to load and unload the boats back on shore. The oyster workers would be getting paid overtime every working day of the year (something DBOC electronic time clock and payroll records show is not the case). The NPS volunteers and kayakers and hikers would all have noticed constant boat traffic. None of that is the correct.

The last paragraph of this section of the IG report leads one to believe that the IG finds nothing wrong with the number of 12 boat trips per day in the DEIS and FEIS. If correct, this is a major logical and mathematical flaw with the IG report. The IG presented a far-fetched argument to find the NPS numbers reasonable, when common sense and simple arithmetic says they are not.

In summary, all of the available data (e.g., NPS photographs and detailed logs, DBOC boat logs, DBOC GPS records) support the contention that DBOC boats make, on average, one trip per day to the UEN/OB sandbars over the course of the year, and not the 12 trips per day described in the DEIS and FEIS. The DQA simply asked NPS to correct this number and resulting statements and findings in the FEIS. If the correct number had been used in the DEIS and FEIS, then NPS

would not have calculated a finding of a major adverse impact. NPS Director Jarvis refused to make any corrections to the FEIS and said the DQA was moot. The FEIS repeated the incorrect number from the DEIS. The IG tried to defend the bogus NPS number by making arithmetic arguments that are absurd. The IG dismissed an allegation of misconduct that Dr. Goodman never made. This section was simply a straw man argument.

8. IG REPORT STRAW MAN ARGUMENTS #3: IG Allegation Concerning Best Available Science is Not From Dr. Goodman's Complaint

THE IG CLAIMED NPS AND VHB USED BEST AVAILABLE SCIENCE

In the DEIS, NPS and VHB used a Kawasaki Jet Ski recorded in 1995 along the New Jersey shore to misrepresent the DBOC oyster skiff, and a cement truck with a large diesel engine to misrepresent the DBOC plastic oyster tumbler with a much smaller electric motor. The IG found that the use of these exaggerated proxies represented "best available science."

The Draft EIS (DEIS) never used the word "*proxy*." The DEIS never told the reader that the data were not collected at Drakes Estero of DBOC equipment. The DEIS never stated, as directed by CEQ, that the information was incomplete. They simply wrote:

"Noise sources at DBOC are summarized in table 3-3." (Chapter 3, page 203)

In Table 3-3, they cited sound levels for each piece of DBOC equipment and called them "*representative*."

The NPS changed this section in the Final EIS (FEIS). NPS wrote:

"NPS did not obtain noise measurements of operational DBOC equipment in Drakes Estero." (Chapter 3, page 256)

Below is Table 3-3 from the DEIS.

TABLE 3-3. NOISE GENERATORS AT DBOC

Equipment	Description [†]	Frequency of Use (Weather Permitting) [†]	Representative Sound Level at 50 Feet (dBA) [‡]
Motorboat	20 HP, 4-cycle engine	Up to 12 40-minute trips/day	71*
Motorboat	40 HP, 4-cycle engine	Up to 12 40-minute trips/day	71*
Forklift	60 HP diesel engine	2 to 4 hours/day	79**
Pneumatic drills	Handheld hydraulic drills	Approximately 2 hours/day	85**
Oyster tumbler	Tube for sorting oysters by size, run by electric motor	Approximately 2 hours/day	79**

Sources: [†]DBOC [Lunny], pers. comm., 2011h; ^{*}Noise Unlimited, Inc, 1995; ^{**}FHWA 2006.

*Hourly values

The IG wrote on page 23:

“The complainant alleged that either NPS or VHB failed to use the best available science when preparing the EIS. NPS or VHB allegedly did not use appropriate proxies or representative data for Company equipment, which led to the assessment that the Company had a major impact on the soundscape.

Our investigation revealed that the term “best available science” was subjective.”

Dr. Goodman agreed that the term “*best available science*” is subjective, which is why it did not figure into the six allegations of his complaint. This was another straw-man argument. The IG put words in Dr. Goodman’s mouth that he did not say. Dr. Goodman only mentioned “*best available science*” in response to Dr. Clark’s use of the word, and in the appendix in response to the Environmental Action Committee of West Marin April 2, 2012 letter to Secretary Salazar claiming that NPS had used “*best available science*.” Dr. Goodman posed a series of questions concerning EAC’s explanation of the NPS DEIS and the EAC use of “*best available science*.” But Dr. Goodman’s six allegations in his complaint filed with Acting Inspector General Mary Kendall did not use those words.

The IG report spent 4 pages (pages 23-26) rationalizing how the Jet Ski measurements represented the “*best available science*” for the oyster skiff. Numerous NPS and VHB staff were interviewed, all of who asserted that the use of this proxy data represented the “*best available science*” (for full discussion, see section 4 on use of proxy data).

There are two problems with this post-hoc rationalization for using the Jet Ski data. First, as Dr. Goodman pointed out with numerous examples in his April 24, 2012 complaint, the NPS has typically followed (and is mandated to follow) Management Policies 2006 and Director’s Order #47 and made direct measurements of human-generated noise, including the 2010 FEIS for Yosemite National Park Environmental Education Center and the 2009 NPS FEIS for Golden Gate National Recreation Area Transportation Infrastructure and Management Plan. GGNRA adjoins Point Reyes

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct National Seashore. All of these and other NPS FEIS reports followed NPS policies and made direct measurements.

Second, even if NPS and VHB thought it appropriate to use proxy data (which violated NPS Management Policies 2006), the NPS had better data, and the IG knew it.

On July 23, 2012, Dr. Goodman talked to IG special agent Vince Haecker on the telephone, and then they had an email exchange. Dr. Goodman wrote:

Take a look at this document in the Federal Register. In 2003, NPS admitted that they did not have good noise measurements of PWC and boats, so they went and made such measurements at Glen Canyon in 2002, and used those measurements for another DEIS. Having made some measurements, who did they go back to 1995 Noise Unlimited Study for the Drakes Estero DEIS?

The study cited by Dr. Goodman, and confirmed in writing by Agent Haecker on July 23, 2012, was “*Harris, Miller, Miller, and Hanson Report No. 295860.370: Draft Technical Report on Noise: Personal Watercraft and Boating Activities at Glen Canyon NRA. March 2002.*” This technical document played a major role in the NPS “Final Environmental Impact Statement: Personal Watercraft Rulemaking” for Glen Canyon National Recreation Area, 2003. For this 2003 FEIS, NPS used appropriate data from the 2002 technical report, using measurements from Glen Canyon. Why did NPS and VHB for the DEIS for Drakes Estero use the obscure Noise Unlimited study from 1995 from the New Jersey shore? Why didn’t they use their own more-detailed study from 2002?

The 1995 Noise Unlimited Report could not be found on the Internet. The company is long since out of business. This is an obscure report and difficult to locate. However, in 2003, NPS admitted that they did not have good noise measurements for personal watercraft (i.e., Jet Skis) and thus they hired a consulting firm to make good measurements at Glen Canyon. The Glen Canyon study included measurements of many Jet Skis and other motorboats of all sizes, and at various speeds and distances.

In summary, NPS did not use the “*best available science*” in the DEIS for Drakes Estero. First, they should have made direct measurements. Second, if that was not possible, NPS had better data from 2002 rather than the Noise Unlimited report from 1995.

9. DOI FROST REPORT: The Current IG Report Isn’t the First Time the DOI OIG Dropped The Ball In this Case

To better understand the DOI OIG’s reluctance over the past four years to vigorously investigate and potentially find scientific misconduct at NPS, we need to briefly consider the March 22, 2011 report from DOI Field Solicitor Gavin Frost (the “Frost report”).

On October 22, 2010, Dr. Goodman informed the DOI OIG of allegations that NPS failed

Appendix 4: The DOI OIG Did Not Conduct A Proper and Independent Investigation of NPS Misconduct to publicly disclose their secret camera program filming Drakes Bay Oyster Company (DBOC) oyster boats and workers from dawn to dusk over a three and one half year period. The NPS secret camera program had generated over 300,000 time- and date-stamped photos. NPS staff and volunteers analyzed most of those digital photographs and produced detailed minute-to-minute logs describing every instance in which a DBOC boat came into the field of view (typically around 700 yards from the hauled-out harbor seals).

Publicly, NPS staff repeatedly told the public, elected officials, and two different scientific review panels (the National Academy of Sciences review panel in September 2008 and the Marine Mammal Commission review panel in February 2010) that NPS had evidence that the DBOC boats and workers were disturbing the harbor seals. But privately, their undisclosed logs from the secret camera program revealed that after three and a half years of secret photographs, NPS had no evidence of disturbance of harbor seals by DBOC boats and workers. This fact was confirmed by Hubbs SeaWorld Research Institute harbor seal behavior expert Dr. Brent Stewart who explicitly stated in his May 12, 2012 report to the NPS and USGS. Thus, the undisclosed photos and logs contradicted NPS public statements.

On November 9, 2010, Deputy Assistant Inspector General Scott Culver wrote to Dr. Goodman that they asked NPS to investigate the allegations, and that they would subsequently:

“evaluate their [NPS] response to determine whether or not appropriate action was taken or further involvement by our office appears warranted.”

NPS, in consultation with the Secretary’s office, directed the DOI Solicitor’s Office to conduct the internal investigation. Field Solicitor Gavin Frost, an attorney in the Billings, MT Solicitor’s office, was selected to conduct the investigation.

According to Gavin Frost, his report was finalized in late January or early February 2011, and released in a public, redacted version on March 22, 2011.

In his March 22, 2011 redacted, public report, DOI Field Solicitor Gavin Frost found that five NPS employees, including Superintendent Neubacher and West Regional Chief Scientist Dr. Graber (both of whom reported to now NPS Director Jon Jarvis when he was Pacific West Regional Director), and three other Point Reyes scientists (Dr. Allen, Dr. Becker, and Mr. Press, all of whom reported to Neubacher), violated the NPS Code of Scientific and Scholarly Conduct.

While Mr. Frost found that five NPS staff had violated the NPS Code of Scientific and Scholarly Conduct, and he told Dr. Goodman and Mr. Lunny in well-documented and separate private conversations (on January 24 and 26, 2011, respectively, prior to the submission of Frost’s report) that he found NPS staff guilty of scientific misconduct.

The Secretary’s office initially said the Frost Report was confidential and would not be released. In March 2011, the Department released a redacted version of the Frost Report. It did not contain a finding of scientific misconduct. Instead, the Frost Report concluded that NPS officials were guilty of “*administrative misconduct*,” a term not found in the relevant federal policies and one Frost subsequently admitted to Dr. Goodman that he invented.

As a result of this invented definition, the DOI announced in their press release that Mr. Frost did not find NPS staff guilty of scientific misconduct and failed to mention the finding that they had violated the NPS Code of Scientific and Scholarly Conduct. A few weeks later, NPS Director Jarvis declared on public radio that while NPS staff had made some mistakes, they were not guilty of misconduct. Jarvis never explained what “mistakes” were made and no attempt was made to correct any record, inform any agency, advise any official, or disclose the correction to the community (or Mr. Lunny).

The finding of “*administrative misconduct*” in the Frost Report was inadequate. So were a number of other conclusions, including the finding that NPS employees did not intentionally fail to disclose the existence of the secret cameras, 300,000 photos, and most important, the detailed NPS logs of those photos showing no evidence for DBOC disturbances of harbor seals.

For example, in 2008, the National Academy of Sciences (NAS) requested all NPS harbor seal data concerning the oyster farm and Drakes Estero. On May 5, 2009, the NAS released its report on NPS and Drakes Estero, which stated that the analysis of time- and date-stamped photographs could help resolve the controversy concerning the NPS claim of DBOC disturbances to harbor seals.

On that date, Superintendent Neubacher and his NPS scientists (reporting to then-Pacific West Regional Director Jarvis) had two years of just such secret, time- and date-stamped photographic data, and yet failed to disclose the photos and detailed logs to the NAS panel, as well as federal and state officials and members of the community.

Though inconsistent with the Federal Scientific Integrity Policy, the DOI Scientific Integrity Policy, and the DOI Code of Scientific and Scholarly Conduct, Mr. Frost inexplicably found no misconduct in the NPS failure to disclose these key data, data that contradicted the public claims NPS made to the NAS.

Although the DOI OIG told Dr. Goodman on October 7, 2011 (when he met with OIG Director of Investigations John Dupuy and his Deputy Scott Culver in their office in Washington, D.C.) that they agreed with him and found the Frost Report inadequate, two years later, in spite of repeated requests for updates and further involvement (e.g., letters from Dr. Goodman to the OIG on September 14, 2011 and March 19, 2012), no additional action has been taken by the OIG. According to the OIG FOIA officer, the November 2010 file remains open and unresolved as of January 2013.

In summary, the OIG allowed this investigation of potential NPS scientific misconduct to languish. The OIG effectively dropped the case, even though they had assured Dr. Goodman, both in writing and verbally, that they would pursue it.