

**EXHIBITS TO AUGUST 11, 2011 LETTER
TO DEPARTMENT OF THE INTERIOR SECRETARY KEN SALAZAR
FROM WILLIAM T. BAGLEY, JOHN L. BURTON,
AND PAUL N. "PETE" MCCLOSKEY, JR.**

EXHIBITS -- TABLE OF CONTENTS

EXHIBIT A	1-9
STATEMENT OF NPS DIRECTOR WIRTH IN 1961; STATEMENTS OF PRINCIPALS APPROVING CONTINUATION OF OYSTER FARM AT THE TIME OF THE 1976 WILDERNESS ACT	
NPS DIRECTOR CONRAD WIRTH STATEMENT, 1961	2
NPS REPORT ON ECONOMIC FEASIBILITY OF THE SEASHORE, 1961	3-4
GGNRA CITIZEN’S ADVISORY COMMISSION STATEMENT, 1975.....	5
SIERRA CLUB PUBLIC COMMENTS ON PRNS WILDERNESS EIS, 1974	6
CONGRESSMAN JOHN L. BURTON STATEMENT AT CONGRESSIONAL HEARING, 1976.....	7
SENATOR JOHN V. TUNNEY STATEMENT AT CONGRESSIONAL HEARING, 1976	8
FORMER ASSISTANT SECRETARY NATHANIEL P. REED STATEMENT, 2011	9
EXHIBIT B	10-31
RELEVANT EXCERPTS FROM THE CALIFORNIA BANCROFT LIBRARY’S HISTORICAL ESSAY: <i>SAVING POINT REYES NATIONAL SEASHORE, 1969-70</i>	
COVER PAGE – ORAL HISTORY, SAVING POINT REYES NATIONAL SEASHORE 1969-1970.....	11
CONGRESSIONAL HEARING, MCCLOSKEY TESTIMONY, 1969	12-13
MCCLOSKEY EXCHANGES WITH WHITE HOUSE ON POINT REYES SEASHORE FUNDING	14-31
EXHIBIT C	32-40
DECLARATION OF WILLIAMN T. BAGLEY, INCLUDING EXHIBITS	
AFFIDAVIT OF ASSEMBLYMAN BAGLEY, 2011	33-38
PRNS SUPERINTENDENT LETTER RE: STATE RIGHTS AT POINT REYES, 1966.....	39
NPS LETTER TO PRNS SUPERINTENDENT RE: STATE RIGHTS AT POINT REYES, 1966.....	40
EXHIBIT D	41-49
DR. COREY S. GOODMAN JULY 20, 2011 MEMO RE “ANALYSIS OF NPS CAMERAS, PHOTOS, AND LOGS FROM DRAKES ESTERO, CA”	
EXHIBIT E	50
CITATION TO WEBSITE SOURCE FOR MAP OF THE POINT REYES NATIONAL SEASHORE	

EXHIBIT A

Former Director of NPS

Conrad Wirth

Testimony on S. 476, A Bill to Establish The Point Reyes National Seashore in the State of California and for Other Purposes

“[e]xisting commercial oyster beds and an oyster cannery at Drakes Estero, plus three existing commercial fisheries, should continue under national seashore status because of their public values. The culture of oysters is an interesting and unique industry which presents exceptional educational opportunities for introducing the public, especially students, to the field of marine biology.”

National Park Service, Conrad L. Wirth, Director, Report on the Economic Feasibility of the Proposed Point Reyes National Seashore (1961), included in the Hearings Before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs, U.S. Senate, 87th Congress, First Session on S. 476, A Bill to Establish The Point Reyes National Seashore in the State of California and for Other Purposes (March 28, 29 and 31, 1961).

REPORT ON THE

Economic Feasibility

of the

Proposed

POINT REYES NATIONAL SEASHORE

1961



prepared by

REGION FOUR OFFICE

Lawrence C. Merriam, Regional Director
180 New Montgomery Street
San Francisco 5, California

February 1961



UNITED STATES
DEPARTMENT OF THE INTERIOR
Stewart L. Udall, Secretary

NATIONAL PARK SERVICE
Conrad L. Wirth, Director



Economic Feasibility of the PROPOSED POINT REYES NATIONAL SEASHORE

INTRODUCTION

This report concerns a survey of the economic consequences relating to the proposal to establish a Point Reyes National Seashore. The survey was conducted by the National Park Service in collaboration with University of California Professor John W. Dyckman of the Department of City and Regional Planning, and Professor Julius Margolis of the School of Business Administration. Marin County Assessor Bert Brommel and Executive Vice President Kenneth Davis of the Point Reyes National Seashore Foundation also made highly important contributions.

A tentative economic report, based on preliminary data, was completed in early 1960. The findings of that report were later supplemented by additional, more detailed information — especially concerning assessed valuation — which was brought out at a public hearing held in Kentfield, California, by a Public Lands Subcommittee of the Senate Committee on Interior and Insular Affairs.

Since the hearing, there has been opportunity to check further with Marin County officials, and the former tentative report has been edited to bring it into concert with the additional information presented at the Senate hearing. This document, which reflects the changes that have been made in the earlier report, represents a meeting of minds between the Marin County Assessor and the National Park Service with respect to assessed valuations.

So far as the investigators are concerned this report concludes the work to be done, at least for the time being, on the economics of the Point Reyes proposal. At some future time it may be feasible to develop other economic aspects of the Point Reyes proposal, and thus make a further contribution to the field of recreation economics, but there are no specific ideas in this connection on the part of the National Park Service at this time.

SUMMARY

The proposed Point Reyes National Seashore is situated on the Point Reyes Peninsula, a conspicuous promontory on the coast of Marin County, California. The highway entrance to the Peninsula is 30 to 35 miles northwest of San Francisco.

The area under consideration includes approximately 53,000 acres of land, plus bays, inland lakes, and tidal and submerged lands extending one-quarter mile to seaward from mean high tide. The varied character of the shoreline, with its wide sandy beaches, wave-swept caves and offshore rocks, and steep coastal bluffs combines with sand dunes and grasslands, chaparral and scenic fir and pine forest to make the area one of the most outstanding segments of unspoiled seashore yet remaining along the Pacific Coast.

The proximity of the proposed national seashore to one of the major metropolitan centers of the United States is a feature that adds greatly to the recreation importance of the area.

Practically all of the lands within the suggested boundary of the proposed area are in private ownership and

those in productive use are largely devoted to dairy operations and beef cattle ranching. Under the present proposal the Point Reyes National Seashore would be operated through two types of land management. Of the 53,000 acres which would be acquired, 33,000 acres would be managed solely for public use. Some 20,000 acres of land situated in the central part of the Peninsula would be leased for ranching purposes to preserve the present pastoral scene.

The suggested boundaries as of April 1960 include a total of 15 dairy ranches which support approximately 7,000 dairy stock, with about 3,175 head in active milk production, and 10 beef cattle ranches with approximately 3,500 head of beef cattle. If the national seashore were established and managed in accordance with the present proposal, about half the dairy lands and beef cattle lands would continue operation under lease agreements. Ranching operation within the portion of the national seashore to be reserved for public use would be largely, if not wholly, discontinued. Two existing trans-Pacific radio receiving stations, maintained by the Radio Corporation of America and the American Telephone and Telegraph Company, respectively, would remain and would continue operation. Additional installations, consisting of public utilities in the form of electric power and telephone services, not only would remain in operation but would require expansion in connection with national seashore development.

Existing commercial oyster beds and an oyster cannery at Drakes Estero, plus three existing commercial fisheries, should continue under national seashore status because of their public values. The culture of oysters is an interesting and unique industry which presents exceptional educational opportunities for introducing the public, especially students, to the field of marine biology. Continuation of commercial fishing, with expansion of existing facilities to include sea food restaurants and markets and charter boat service for deep sea sport fishing would be compatible with the seashore concept.

Almost all of the Peninsula is privately owned and there is very limited access to the shoreline. Thus recreation now plays a relatively minor role within the boundaries of the proposed national seashore. Public areas are limited to two small developments along the shore.

On the basis of Marin County tax records, the total assessed valuation of lands and improvements within the 53,000 acres of the proposed national seashore is approximately \$2,695,000. This figure includes approximately \$1,726,000 in lands and improvements that are assessed locally (by the County) and \$968,550 in the State-assessed communications and power utilities already mentioned, which would remain if a national seashore were established. Of the locally-assessed lands and improvements, approximately \$1,291,000 represents the assessed valuation within the proposed PUBLIC USE AREA and approximately \$435,000 the value within the proposed RANCHING AREA.

1975 Citizen's Advisory Commission

*Summary of Golden Gate National Recreational Area (GGNRA) Citizens
Advisory Commission's wilderness subcommittee (August 8, 1975)*

In Their Own Words: **Voices of the Citizen's Advisory Commission**

The subcommittee consisted of: John Mitchell (Chairman), Fred Blumberg, Daphne Greene, Joe Mendoza, Amy Meyer, and Merritt Robinson; appointed by CAC Chairman Frank Boerger to study the issues involved with the wilderness proposal. They held three meetings, on July 10, July 22, and August 5, with various others attending and putting forth comments/concerns.

At the August 5 meeting, the group "generally agreed" on a list of points, including:

"6. Specific provision should be made in the legislation to allow the following uses to continue unrestrained by wilderness designation:

- a. Operation of that portion of the Murphy ranch that calls within the proposed wilderness. This should be done in accordance with generally acceptable local standards of ranching practices and will include such activities as the use of pickup trucks and tractors for the purpose of maintaining necessary ranch roads, stock ponds and fences as well as caring for the health of the stock and periodic supplemental feeding.
- b. **Operation of Johnson's Oyster Farm including the use of motorboats and the repair and construction of oyster racks and other activities in conformance with the terms of the existing 1,000 acre lease from the State of California."**

They also recommended "the preamble of the wilderness legislation should clearly state the atypical nature of wilderness at Point Reyes."

Sierra Club

*April 1974 Public Comment on Final
Environmental Impact Statement (EIS) for
S.2472, Bill to Designate Wilderness at Point
Reyes National Seashore*

“The draft Environmental Impact Statement implies that none of the Drakes Estero can be classified as wilderness because of Johnson Oyster Farm. This is misleading. The company's buildings and the access road must be excluded but the estero need not be. The water area can be put under the Wilderness Act even while the oyster culture is continued --- it will be a prior existing, non-conforming use.”

Sierra Club's letter of comment on EIS, pp. A-38 to A-54; see p A-51 for this quote.

Congressman John L. Burton

*Sponsor of S. 2472, Bill to Designate
Wilderness at Point Reyes National Seashore*

“This legislation is intended to preserve the present diverse uses of the Seashore....” (p. 272)

“There are two areas proposed for wilderness which **may be included as wilderness with ‘prior, non-conforming use’** provisions. One is Drakes Estero where there is a commercial oyster farm...” (p. 273)

Hearings on S. 1093 and S. 2472 Before The Subcomm. on Parks and Recreation of the Comm. on Interior and Insular Affairs, 94th Cong. 271 (1976) (statement of Representative John Burton) (emphasis added).

Senator John V. Tunney

*Author of S. 2472, Bill to Designate
Wilderness at Point Reyes National Seashore*

“Established private rights of landowners and leaseholders will continue to be respected and protected. The existing agricultural and **aquacultural uses can continue.**” (p. 271)

Hearings on S. 1093 and S. 2472 Before
The Subcomm. on Parks and Recreation
of the Comm. on Interior and Insular
Affairs, 94th Cong. 271 (1976)
(statement of Senator John V. Tunney)
(emphasis added).

Pete McCloskey
rumseyfarm@aol.com

August 11, 2011

Pete,

When the massive extension to Pt. Reyes National Seashore was under consideration, I made my second inspection of the area before congressional testimony. Obviously the oyster farm on an important national park seashore raised some eyebrows, but both the legislative history and the conditions of use were sufficient for me to support the continuation of the oyster farm as a 'nontraditional use'.

The act expanding the Seashore was aided by none other than Casper Weinberger, who was the head of OMB at that time. He had gone to that wonderful California school located in the mountains above the Seashore and knew every nick and cranny of the areas to be added to the proposal. I was sure that he would cut my planned expansion to shreds; instead he added hundreds of acres of land he considered vital to protect the view and keep unwanted development at bay.

I believe I testified that the existing use of a certain defined area within the Seashore was to be considered 'a non-conforming use zone' which satisfied the Burton brothers and even Edgar Wayburn, the arch deacon of the Sierra Club and the rest of the Interior committees.

Nathaniel P. Reed
Former Assistant Secretary for
Fish & Wildlife,
Department of Interior, 1976

EXHIBIT B

Regional Oral History Office
The Bancroft Library

University of California
Berkeley, California

SAVING POINT REYES NATIONAL SEASHORE, 1969-1970:
AN ORAL HISTORY OF CITIZEN ACTION IN CONSERVATION

Interviews with

Margaret Azevedo
Peter Behr
John D. Ehrlichman
Katy Miller Johnson
William L. Kahrl
Paul N. "Pete" McCloskey, Jr.
Boyd Stewart

with an
Introduction by William J. Duddleson

Interviews conducted by
Ann Lage
and
William J. Duddleson
1990, 1991

Appendix A
McCloskey Congressional
Testimony, 5/13/69

*pt.
Reyes*

POINT REYES NATIONAL SEASHORE, CALIF.

HEARING
BEFORE THE
SUBCOMMITTEE ON
NATIONAL PARKS AND RECREATION
OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES
NINETY-FIRST CONGRESS

FIRST SESSION
ON

H.R. 3786 and Related Bills

TO AUTHORIZE THE APPROPRIATION OF ADDITIONAL FUNDS
NECESSARY FOR ACQUISITION OF LAND AT THE POINT REYES
NATIONAL SEASHORE IN CALIFORNIA

HEARING HELD IN WASHINGTON, MAY 13, 1969

Serial No. 91-5

Printed for the use of the
Committee on Interior and Insular Affairs



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1969

STATEMENT OF HON. PAUL N. McCLOSKEY, JR., A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. McCLOSKEY. Thank you, Mr. Chairman. I would ask unanimous consent to insert this written statement at the present time in the record. It is very brief.

Mr. TAYLOR. In the absence of objection, so ordered.
(Mr. McCloskey's full statement follows:)

STATEMENT OF HON. PAUL N. McCLOSKEY, JR., A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF CALIFORNIA

Mr. Chairman, I speak in favor of H.R. 3786 and my own identical bill, H.R. 10137. In view of the breadth of the testimony which has already been heard, I will limit my testimony to personal knowledge and experience with the area in question and particularly its rising land values.

I am privileged to live about the same distance south of San Francisco that the proposed Point Reyes National Seashore is north. Before being elected to Congress in 1967, my profession was that of an attorney specializing in condemnation cases on behalf of landowners. The entire San Francisco Bay Area has been characterized by skyrocketing land prices in the last several decades. Particularly is this true with respect to rural areas which are suitable for subdivision and which are within an hour or two's drive from existing urban centers.

The decentralization of shopping centers and industry has made areas such as Point Reyes easily accessible to a new breed of affluent Americans, an ever-increasing number of people who desire to own a second home in the country. Semi-rural areas on the periphery of the San Francisco Bay Area's suburbs have doubled in value in the past 10 years. In my own district, rural San Mateo County, land similar to Point Reyes and the same distance from San Francisco has gone from \$300 per acre to \$5,000 per acre since 1962. From my personal observation and experience, I believe it would be foolish indeed to authorize any sum less than the full \$27,500,000 figure of the bill before the Committee. I would likewise suggest consideration of the concept of legislative taxing used in the Redwoods National Park last year. I think it absolutely certain that land values in the Point Reyes area will continue to escalate at a rate rapid enough to make even the \$27,500,000 figure inadequate unless the property is taken by condemnation during calendar year 1968.

In conclusion, let me say that the cost of this acquisition is infinitesimal in comparison with the public benefits in preserving this magnificent wilderness and adjoining terrain for perpetual public use. There are few areas in the world which compare with the rugged grandeur of California coastlines, and in a world where we spend equivalent sums for a few days' expenditure of ammunition 8,000 miles away in Viet Nam, we would be derelict indeed not to recognize the national priority here involved.

Mr. McCLOSKEY. I have very little to add to this statement except in response to the question Mr. Scrubitz asked earlier. I think there is no question but that the entire San Francisco Bay area is an area of national interest and of national historic and geographical attraction. People come from all over the world to San Francisco and the fact that this national seashore will be within an hour's driving distance to the north of the Golden Gate Bridge, I think, is extremely important as an adjunct to the ordinary visit paid San Francisco by every citizen.

I would like to make a second comment. Until 2 years ago it was my privilege to earn my living as a condemnation lawyer and I think it is sometimes difficult for Members from areas other than the rapidly burgeoning population centers of California to understand the transition that is taking place around these urban areas when suddenly nearly everyone desires to have some place outside that urban area to which he can retire. Because of that, these semirural areas within an hour or two's drive of the urban centers have gone up in value by increases which are not explained solely by inflation. They are explained, I think, by the growth of an affluent society which desires this second rural home in the country with the privilege of getting into the countryside within an hour or two's driving time if at all possible. And this is the factor which to my personal knowledge, has caused lands within the same driving distance of San Francisco to increase as much as ten times in value in the last 7 years.

Before I came to the Congress, I was engaged in litigation with the U.S. Government and I am somewhat familiar with the tendency on the part of Government appraisers to undervalue rather than over-evaluate lands which they seek to acquire in areas of this kind. I would add my own admonition that in view of the history of this particular acquisition, I would submit that the higher figure of \$38 million rather than the lower is the appropriate figure for this committee to authorize.

Thank you.
Mr. TAYLOR. Are you familiar with the procedures that the National Park Service used in acquiring this land?

Mr. McCLOSKEY. Not this particular land, sir. I have just been given the report that the Department has submitted.

Mr. TAYLOR. I was going to ask you whether or not, in your opinion, the jury verdicts were reasonable, but perhaps you would not know that area well enough.

Mr. McCLOSKEY. Well, juries of California tend to appreciate the prospective use of lands of this kind—this semirural land presently being used for ranching—because the wealthiest men in the San Francisco Bay area are often men who were sheepherders 20 years ago and owned ranches of this precise type.

Mr. TAYLOR. Any questions from anyone else?
Thank you very much.

Mr. McCLOSKEY. Thank you.

Appendix B
McCloskey to Ehrlichman

PAUL N. McCLOSKEY, JR.
11TH DISTRICT, CALIFORNIA

SEP 18 1969
COMMITTEE ON
GOVERNMENT OPERATIONS
AND
COMMITTEE ON
MERCHANT MARINE
AND FISHERIES

Congress of the United States
House of Representatives
Washington, D.C. 20515

September 16, 1969

Mr. John Ehrlichman
Counsel to the President
The White House
Washington, D. C.

Dear John:

Here's a starter. The only man who can save the Point Reyes National Seashore is the President. He is running out of time because the House Interior Committee is going to adjourn October 1, and the Bureau of the Budget Director, Robert Mayo, has made it clear that there are no funds available from BOB despite what has been properly characterized thus far as "weak White House support."

The money is available in the land and water conservation fund. All the President need do is order that it be released, earmarked for the national seashore projects, specifically, Point Reyes.

If you move this time, why not let a few of us know in advance so that we can properly give the President credit where it is due? It might also help to have the President announce that due to the efforts of George Murphy, Don Clausen and Bill Mailliard, he is taking this step to preserve a priceless national heritage.

Yr. Obt. Svnt.

Pete

PNMCC:cb

SEPTEMBER 18, 1969

TO: DIRECTOR MAYO

FROM: TOR HULLIN

Attached is a copy of a letter from Congressman Paul McCloskey concerning Point Reyes National Seashore.

John Ehrlichman would like to know if the money in the land and water conservation fund is available.

Many thanks.

Attachment

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

*Look
up
McCluskey*

McCluskey

Funds in Land's Water Conservation
Funds before is committed
for 7470 already publicly
identified w/specific projects

for 71 Budget it is an open
question. Considerable re-programming

Land rates are ↑

*Increasing
increase*

Acquisition of additional land
will cost at least 50 million.

Needed Authorizing legislation
is still pending.

September 26, 1969

MEMORANDUM FOR DOUG HOFE

FROM: BUD KROGH

SUBJECT: POINT REYES NATIONAL SEASHORE

I'm sure you have been beleaguered with suggestions on the need to save the Point Reyes project.

Attached is some material from Congressman McCloskey's office who has been pressuring us to do what we can.

Is there anything the Department of Interior can do to help this program go forward?

MEMORANDUM

325

Appendix E
Krogh to Hullin

THE WHITE HOUSE

WASHINGTON

September 29, 1969

MEMORANDUM FOR TOD HULLIN

FROM: BUD KROGH *AK*

SUBJECT: POINT REYES

Per your instructions, I have asked Jim Schlesinger, BoB, to provide me with a memorandum on how we can get additional funding for the Point Reyes project.

I advised Schlesinger that Point Reyes had received a higher priority in our thinking, and that it was necessary for us to do something dramatic. Accordingly, he will get a memorandum back to me today or tomorrow which should be in time for Ehrlichman to brief McCloskey.

E

1

ADMINISTRATIVE ASSISTANT
JEFFREY P. NEWMAN

FIELD REPRESENTATIVE:
MR. AND MRS. ROY LEMON
LATHAM SQUARE BUILDING
OAKLAND, CALIFORNIA 94612

7TH DISTRICT, CALIFORNIA
COMMITTEE ON
APPROPRIATIONS

Congress of the United States
House of Representatives
Washington, D.C. 20515

OCT 10 1969

October 9, 1969

Dear *[Handwritten initials]*

As you are well aware, the Administration will not release the funds necessary for further purchases of land for the Point Reyes National Seashore.

I intend to introduce a bill which is designed to stimulate the release of the trust funds and make them available for this land acquisition.

This bill is a logical extension of the Land and Water Conservation Act of 1967, which was amended to authorize partial use of funds derived from oil leases on the outer continental shelf. The Administration budget request is only \$124 million for land acquisition for fiscal year 1970. This is the amount the Bureau of the Budget intends to release. The total amount available in the fund, on the other hand, is now \$288.5 million. Therefore, \$164.5 million will be unexpended this year unless we act soon.

This bill will suspend the authority of the Executive Branch to enter any lease agreement if the full amount of the Land and Water Conservation fund is not expended, and will also direct suspension of drilling operations under leases granted after passage of this bill in the same circumstances.

I recognize that this is a strong measure but feel it is the only way to break the fiscal logjam we are now facing.

I sincerely hope you will join me as a co-sponsor of this legislation. I intend to introduce the bill on October 19. If you wish to co-sponsor, please notify my office on EX 2661.

Sincerely yours,

[Handwritten signature]
Jeffery Cohelan
Member of Congress

[Handwritten notes:]
P.M.C
good idea
May be the only
way to do
set
of
funds

[Handwritten notes:]
Cut down on
Bulky
37.6 allocated to
Pike Service

MCCLOSKEY, JR.
 STREET, CALIFORNIA

COMMITTEE ON
 GOVERNMENT OPERATIONS
 AND
 COMMITTEE ON
 MERCHANT MARINE
 AND FISHERIES

Congress of the United States
 House of Representatives
 Washington, D.C. 20515

October 10, 1969

Mr. Tod R. Hullin
 Administrative Assistant
 The White House
 Washington, D.C.

Dear Tod:

This is in preliminary response to your note of October 1 and the confidential BOB memorandum of that date.

1. The President has the authority to increase the allocation of Land and Water Conservation Act funds from \$124 million to a figure in the neighborhood of \$200 million or more.

2. With this increase there is also the discretion of the President or the Secretary of Interior to allocate more than \$37.6 million to the Park Service, either by adding all of the increase to the Park Service or by denying funds to other beneficiaries of the fund.

3. With respect to the priorities of projects elsewhere in the United States, a new criteria might be applied, to wit: how fast are the land prices rising in the areas to be acquired? I suspect that Point Reyes, with its proximity to San Francisco, may show a higher annual increase in fair market value than some of the other areas.

4. None of this means much, of course, unless the House Interior Committee, at its hearings which are now set for November 13, increases the authority for Point Reyes from the present \$19.1 million. It is estimated that \$28.3 million will be necessary, but I suspect the real cost may now be up to \$38 million.

197-289
 Oct 17 78

Mr. Tod R. Hullin
October 10, 1969
Page Two

5. Assuming that the increased authority is enacted by the Congress, it is my understanding that a supplemental appropriation bill would also be required.

6. To have a chance of success in these legislative actions, I assume the President should indicate now that he will allocate the required funds if Congress does its part.

7. Chairman Aspinall's motives, desires and intentions are a mystery to me.

I am enclosing for your examination a letter I have just received from Congressman Cohelan with respect to an act he proposed to introduce on the same subject.

I will not support his bill until the other alternatives are resolved.

Best regards,

Pete

Paul N. McCloskey, Jr.

PNMcC:cb

cc: Mr. John D. Ehrlichman

253
November 13, 1969

MEMORANDUM FOR JOHN D. EHRLICHMAN

From: John C. Whitaker *JCW*

Re: Purchase of Point Reyes California Peninsula
Area, Northern San Francisco, as a National Park

BACKGROUND

1. Park Director Hartzog testifies today before the House Interior Committee in favor of authorizing an increase of \$33.5 Million for the purchase of Point Reyes as a national park. His testimony will center largely around the rise in land values from the previous estimate of \$28.3 Million, to the present estimate of \$33.365 Million to purchase the area. When asked by the Committee if he favors a supplemental FY 1970 appropriation legislation, he will "waffle" and he is instructed to do so by me.
2. Perhaps as early as tomorrow, but certainly not more than two or three weeks from now, the Interior Appropriations Committee will introduce legislation to appropriate funds and make political hay out of it. All intelligence I can gather on it indicates that the Interior Appropriations Committee will pass an appropriation of \$33.365 Million. In other words, the President will be "run over" by Congress and the Democrats will collect the credit.
3. I foresee no chance the ultimately the President will veto the entire appropriations package, but he could veto the authorization bill which will come to him as one item -- but at great political expense.
4. After meeting with Carl Schwartz, Director of the Natural Resources Division, BOB; Carl McMurray, Advisory to Secretary Hickel, and Park Director Hartzog, Hartzog proposed the following plan:

Prepare supplemental appropriations legislation for FY 1970 for \$7.5 Million. This is the amount of money he usefully feels can be spent to purchase property in the Point Reyes area during this fiscal year. Hartzog could probably get by with \$2 or \$3 Million if authorized to negotiate with Sweet (the key land) for only a portion of his property and defer later negotiation until next year, but that would just make the tab stiffer in later years. His schedule for appropriations for purchase of the whole park will be:

FY 1970	\$ 7.5 Million (may be only \$2 or 3 Million)
FY 1971	\$ 7.5 Million
FY 1972	<u>\$18.5 Million</u>
	\$33.5 Million (approximately)

Hartzog, who is probably more aware than anyone about the escalating cost of land purchase, is convinced that he can purchase the park for \$33.5 Million by the end of FY 1972.

5. Appropriations legislation should not include a clause for "legislative taking" since, obviously, we cannot have much of the \$33.5 Million available in FY 1970. The purchase would have to be by way of the condemnation route through normal court procedures.

6. Other methods now being explored to find the necessary \$7.5 Million in FY 1970 funds are as follows:

- a) Carl McMurray is re-examining the possibility of reprogramming funds in the Bureau of Outdoor Recreation in the Department of Interior.
- b) Carl McMurray is making a delicate exploration of the possibility of making a deal with the Department of Agriculture whereby contract authority can be given from the National Park Service of Interior to the Forest Service of Agriculture in return for cash from the Department of Agriculture.

Carl Schwartz will not undertake this exploration with Agriculture until such time as an authorization bill on Point Reyes has been passed.

RECOMMENDATION

If the above options to find any money are not fruitful, and I am pretty sure they will not be, then I recommend that we go ahead and put in legislation appropriations for supplemental FY 1970, although it may not have to be for the full \$7.5 Million.

It may be that Hartzog can get started with less money than that, but at any rate we commit for a speedy purchase by the end of FY 1972 of the entire Point Reyes area. My rationale is that we are going to be run over by Congress on this one and we should therefore pick up the political credit and do it in the most dramatic way possible.

The following parks have requests in for acquisition for FY 1970, and the total cost for purchase of parks is indicated below:

Cape Cod, Massachusetts	\$ 17.401 Million
Point Reyes, California	33.5 Million
Padre Island, Texas	4.130 Million
Lake Mead, Arizona/Nevada	<u>4.6 Million</u>
	\$59.631 Million

- a) Obviously, California has much more political clout when you look at the political situation in the above States.
- b) It gives the President a chance to identify with California, but not at the expense of playing regional favoritism because he can point out that Point Reyes, more than any park, represents the prime example of major encroachment by suburban sprawl of any area in the country.
- c) The political pressure on this one is extremely high. For example, Congressman Don Clausen now has 250,000 petitions for purchase of the park.

-4-

- d) Finally, on the Sweet property (a key portion of the park) developers have reportedly made the offer of \$5 Million for purchase of this land for highrise apartments, right in the choice peninsula portion of the park.

Considering the above, I recommend that the President beat the Democrats to the punch and submit supplemental FY 1970 appropriation legislation -- that he should do this in a dramatic way by inviting to the Cabinet Room the entire California Delegation (both Democrats and Republicans), together with Senators Jackson, Allott and Bible (Parks Sub Committee), Congressmen Aspinall, Saylor and Roy A. Taylor (Chairman of the House Park Subcommittee, Dem. N. C.) and Joe Skubitz (Rep. Kansas).

Just before a meeting with this large group, the President should meet privately for about ten minutes with Secretary Hickel, Senator Murphy and Don Clausen (the Point Reyes park is in his District) and then have the President announce his decision to the entire group, with an accompanying letter to Chairman Aspinall at the same time.

Assuming that no funds are forthcoming in FY 1970 from any of the above described options and further assuming that it's a real fact that we have gone through our \$192.9 Billion budget level for FY 1970, then the money should come from some other program, e. g. cancel a space shot.

2-4

THE WHITE HOUSE

WASHINGTON

November 18, 1969

MEMORANDUM FOR

Honorable George Murphy

Honorable Don Clausen

J. E. Whitaker

Subject: Point Reyes National Seashore Area

After your meeting with the President, you may wish to make the following points to the press:

1. That the Point Reyes national seashore area was originally authorized in 1962 but the funds have never really been appropriated to the full amount to purchase the area. To date, \$19 Million have been appropriated to buy 22,816 acres, whereas the total park area is 54,136 acres. In other words, there are 31,320 acres left to purchase.

2. Even given the tightness of the FY'70 Budget, the President has told you that he wishes to go ahead with the purchase of this property as a national seashore area because the pressure to develop the area for highrise apartments and single family suburban dwelling units is extremely high and the President feels this beautiful area must be preserved for present and future generations.

3. If you are asked by the press why the President has decided to go ahead with this park area and not with other national park areas, you may wish to indicate that Point Reyes is unique in the sense that there are higher pressures for real estate development and escalating land values here than in any place in the country. Therefore, the President has indicated action is required now.

THE WHITE HOUSE
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November 18, 1969

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Honorable George Murphy
Honorable Don Clausen*J. E. Whitaker*

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2. Even given the tightness of the FY'70 Budget, the President has told you that he wishes to go ahead with the purchase of this property as a national seashore area because the pressure to develop the area for highrise apartments and single family suburban dwelling units is extremely high and the President feels this beautiful area must be preserved for present and future generations.

3. If you are asked by the press why the President has decided to go ahead with this park area and not with other national park areas, you may wish to indicate that Point Reyes is unique in the sense that there are higher pressures for real estate development and escalating land values here than in any place in the country. Therefore, the President has indicated action is required now.

- 2 -

4. You may wish to indicate that should the House Interior Committee enact authorizing legislation above the present funding level of \$19 Million, the Administration will present a supplemental budget request for FY'70 and schedule funds for FY'71 and FY'72 to complete the purchase of the area.

John C. Whitaker
Deputy Assistant to the President

INTERVIEW HISTORY--John D. Ehrlichman

In September 1969 John Ehrlichman was President Nixon's White House counsel, and that November he became Nixon's principal assistant for domestic affairs. When he had arrived in Washington that January with the newly elected president, Ehrlichman and his family found a home in nearby Virginia, near his Stanford law school classmate and friend of twenty years, California Congressman Pete McCloskey. The two men were not only neighbors, they were in the same carpool; both were driven to work in the White House limousine assigned to Ehrlichman.

When McCloskey learned, on September 12th, that Nixon's budget director had announced that--even if Congress appropriated funds to complete land acquisition at Point Reyes National Seashore--the funds would not be released by the Nixon administration, he immediately called the one person he knew who might be able to get that policy changed: John Ehrlichman.

The key question addressed during this interview more than twenty years later was what had caused the Nixon administration's stated policy on Point Reyes funding to change, sometime between September and November of '69, from "no" to "yes"? During the interview Ehrlichman said--accurately, as I, too, read the paper trail in the Nixon presidential files held by the National Archives--the fact that McCloskey got his attention, and that he in turn put his staff to work on it in a responsive way, was, at least, "the thing that started it in the new direction."

Arrangements for the Ehrlichman interview were facilitated by Pete McCloskey. Their friendship, estranged because of their ardently held and widely differing views on the Vietnam War--beginning about a month after McCloskey first asked Ehrlichman for help on Point Reyes--was reestablished in the mid-seventies. That was when McCloskey visited Ehrlichman in the federal prison camp where he served eighteen months following his Watergate-related obstruction-of-justice and perjury convictions.

The interview was done June 11, 1991, in Ehrlichman's home office on a hillside in Santa Fe, New Mexico, base for his consulting work which includes environmental consulting, and his writing--his third novel was in progress. His two black retrievers, Bryan and Daphne, were silent witnesses to the interview and Cat, who sat on his lap purring into the tape recorder, a more vocal one. During the morning the only reference to Ehrlichman's Watergate time of trouble was made by me, as I said goodbye. He said, have a good trip home, and I wished him good luck, "after all you've been through." Nothing, he said, could be further

number of times, departments--like the Department of the Interior in this case--would take a position, and the Bureau of the Budget would take an entirely different position. It would be up to the Congress to reconcile the conflict if they could, or for one of us to escalate it to a level in the White House where one of us got involved and refereed between the budget people and the departmental people and arrived at some kind of a reconciled position.

Congressman Pete McCloskey's Role

Ehrlichman: In this case, the [Interior] Department took a position that the Bureau of the Budget hedged for a while, and then it came along and took a position adverse to the department. It got up to the assistant level in the White House because Pete McCloskey¹ pounded on me.

Duddleson: That was the first time it was brought to your attention?

Ehrlichman: Oh, I think so. I suspect that John Whitaker, my assistant, knew that there was a conflict, but we had dozens of those in every department all the time. Ordinarily, the presumption is that the Budget people are right and the department is wrong, and we go on from there.

In this case, McCloskey was a college friend and we'd been to [Stanford] law school together and our families had grown up together. I used to give him a ride to work. The White House limousine would come out to Great Falls and pick me up and then stop in McLean² to get him, and then it would drop me at the White House and take him on up to the Hill. And many times, we stopped and got Lew [Lewis H.] Butler, who was assistant secretary of HEW [Health, Education, and Welfare], so the three of us would ride up together, and we would talk about whatever we had on our minds.

It was in some kind of a context like that, I'm sure, that McCloskey began to call my attention to Point Reyes. He had easy access to me and could pick up the phone and get me, and it was something that he cared a lot about, so it came to

¹Paul N. (Pete) McCloskey, of San Mateo County, California, was a Republican member of the House, 1967-83--Ed.

²Great Falls and McLean are Virginia suburbs of Washington.

Who Speaks for an Administration?

Duddleson: If I can ask you to recapitulate for a minute here, the key factors in changing the administration's position on this matter called saving Point Reyes were, or included?--

Ehrlichman: Let me quarrel with your question.

Duddleson: Fair enough.

Ehrlichman: As far as I'm concerned, the administration didn't have a position, because Interior went one way and Budget went another, and we really hadn't arrived at an "administration" position. The Mayo letter [of September 10, 1969] was the budget people's position.

Duddleson: Even though in the public mind and in the press, and because the Budget Bureau was in the Executive Office of the President, it was perceived to be so [the administration position] by many people?

Ehrlichman: Sure. And if you had walked in my office the day that letter was written and said, "What's the administration's position?" and shown me that letter, I would have said, "Hey, wait a minute. The president hasn't decided this. And when we have a conflict, we reconcile it and we arrive at a common position, and we'll do that, but we haven't done it yet." So it was an absence of a position but it was an apparent position because the Budget letter got a lot of currency.

What Turned Point Reyes in a New Direction?

Pete McCloskey's Pounding Started It

Ehrlichman: And what turned them around? I would say but for Pete McCloskey pounding on me, it probably wouldn't have gotten turned around. Hickel didn't have the clout to elevate it to the level of a presidential decision. Mayo was content the way things were. Whitaker was new to the job. So if McCloskey hadn't intervened, Murphy and the others would have written a lot of letters and there would have been a lot of petitions, but I doubt that we'd have changed. We would have just let it sit there that way.

EXHIBIT C

Declaration of William T. Bagley as follows:

For the purpose of some credibility, my educational and professional background includes: 1949 graduate of the University of California – Phi Beta Kappa and Class Valedictorian; UC Boalt Hall Law School – Board of Editors, California Law Review, 1952; law practice 59 years, admitted to practice before the United States Supreme Court. Public offices, among others: Assemblyman, Marin and Sonoma counties, 1961-1974; First Chairman, Commodity Futures Trading Commission, Washington, DC, 1975-79; Member, California Public Utilities Commission, 1983-1986; Member and then Chairman, California Transportation Commission, 1983-1989; Member, UC Board of Regents, 1989-2002.

Recently my daughter Lynn Bagley, who started the Farmers Market movement in Marin County, reminded me of the fact that I authored Assembly Bill 1024 in 1965. Thus I called the UC Berkeley Bancroft Library, where approximately 500 of my 14 years of authored statutes and related files are stored, and received a packet of AB 1024 materials.

As the local Assemblyman, I received a request, dated January 4, 1965, from the Point Reyes National Seashore asking that I introduce legislation granting State-owned tidelands surrounding Seashore properties to the National Park Service. The request made no mention of fishing rights.

Since I was raised in West Marin (Woodacre) and had hunted brant (a small goose) in Limantour Bay, fought rural fires for the Marin County Fire Department as summer employment to pay for college (1945-1952), I knew of the existing oyster propagation and fishery in Drake's estuary. I was acquainted with oysterman Charlie

Johnson and his wife who he had brought back from Japan after the war. He was my constituent and ran an important local enterprise. I certainly would not have done anything to jeopardize his oyster fishing operations as his Assemblyman and as his friend and constituent representative.

In 1965, the legislature met in General Session every other year – sessions limited to 180 legislative days, members had no individual professional staff, just one secretary during the session. (There were no caucus staffs telling members “how to vote” and no partisan aisles.) Without personal staff, it was my practice to personally visit Legislative Counsel’s office to deliver bill requests and discuss drafting. I have no present recollection of those discussions, but when the draft bill was delivered to me for introduction (across the Assembly desk), it reserved the “absolute right to fish.” When I noted this provision (constitutionally required), I believed that the oyster operation was thus included and preserved, especially since I had earlier authored and passed AB 767 as requested by the Department of Fish and Game. AB 767 made many administrative changes regarding planting and propagation, but one major provision was to specify that “shellfish” included “oysters” and to expand “fish” to include all shellfish, not just oysters. To me and to the entire legislature, AB 767 included oyster propagation and stated that allotments must be “in the public interest”, a finding to be made only by the Commission. AB 767 was signed by the Governor on July 12, 1965, three days after the signing of AB 1024. Further, and most relevantly in 1965, there existed on-going allotments and a lease or license, all having been granted by the Commission to Charlie Johnson.

All of the above was confirmed by the Department of Fish and Game Director's letter of October 22 – two weeks after these bills became effective. The Department wrote to the Seashore, to me and to Johnson: “[t]hat all State laws and regulations pertaining to shellfish cultivation (including planting requirements, land rentals, etc.) remain in effect since the conveyance by the Legislature reserves fishing rights to the State.” This memorandum followed a September 30, 1965 Attorney General's Opinion (26 Cal. Atty.Gen.Ops. 68) addressed to the Director of the Department, advising that “oysters and shellfish are ‘fish’”, within the meaning of Fish and Game Code Section 45 . . . and “as such are subject to the prerogative of the sovereign [the State] to protect and preserve them in such a manner and upon such terms as the Legislature deems best . . .”. Had these authoritative statements not been issued, I certainly would have taken corrective action to prevent possible damage to the oyster operations in my District. All of this was re-confirmed by the National Park Service in a 1974 environmental review of possible “wilderness” status which described the oyster operation: “This the only oyster farm in the Seashore, control of the lease [called a license at times] from the California Department of Fish and Game, with presumed renewal indefinitely, is within the rights reserved by the State on these submerged lands.”¹

Almost 40 years later, from about 2004 forward, other memoranda and opinion pieces began to be issued making claims that the reservation in my AB 1024 only applied to “wild fish” and further that “oysters were not fish.” None of those writings, repeated by others within State agencies, makes any reference to any of the above

¹ I did not see this item at the time as there was then no controversy and I was not following this process.

related facts and of the evidence of legislative intent. Interestingly, and in the face of some of those contentions, the Fish and Game Commission continued oyster allotments and issued a new lease/license – in the public interest – in 2004 for a term of 25 years until 2029.

As the relevant National Park Service ostensible deadline year 2012 approaches re the reissuance of its own version of an oyster permit, interest in this matter accelerates. (The “Wilderness Act” is technically not controlling since Senator Dianne Feinstein, by a 2009 amendment, allowed a renewal for 10 to 15 years.) Former Congressman Pete McCloskey (1967-83) became immersed in efforts to determine whether the continuation of the oyster farm in Drake's Estero would endanger the seal population as claimed by the Park Service as the basis for terminating the oyster permit. He had been asked by a neighboring rancher to check into the question. He was acting *pro bono* in this inquiry. It was then I was reminded that it was my AB 1024 that effected the reservation of the “absolute right to fish” which prompted my own *pro bono* research and involvement.

Those who attempt to revise history perhaps did not know of the contemporaneous background facts recited here, and at times have avoided comment on the open public record available. They also avoid any discussion of the State's long-held public policy of fostering oyster culture and retrieval commencing with Fish and Game statutes first enacted in 1851. (See material developed by retired public law attorney Judith Teichman reciting this history and referencing multiple constitutional and statutory materials – also all *pro bono*).

The true meaning of the 1965 reservation of “absolute right to fish” is derived from 1965 legislative action and contemporaneous execution by authorized agencies and not by a much later interpretation by those never involved in and not aware of the 1965 process. What was reserved in 1965 was and is the extant of rights as they existed in 1965 – related in detail above. Subsequent references to “aquaculture” and other such descriptions by some State authorities in the late 2000 decade may be true today but are irrelevant to what was in fact and law reserved in 1965. Most recently one of those State commentators stated in a media interview that, “You have to look at the ink on the page. It is difficult to come to any other conclusion than this Tideland belongs to the United States.” This, however, was uttered before any review of this declaration and all of the contemporaneous ink cited above.

As set forth in *Martin v. Szeto*, 32 Cal.4th 445 (2004) – headnote:

“When statutory text is ambiguous, or it otherwise fails to resolve the question of its intended meaning, the Court looks to the statutes legislative history and the historical circumstances behind its enactment. Finally, the Court may consider the likely effects of a proposed interpretation because, where uncertainty exists, consideration should be given to the consequences that will flow from a particular interpretation.” [emphasis added]

That consequence would be the complete obliteration of the rights reserved by the Legislature meant to encompass existing rights then extant and then described when the Legislature acted. I will leave it to others to fully brief this subject if necessary, but here add words to describe California’s rules when interpreting legislative tideland grants. These seem to be broader and more result-oriented than those applied to ordinary statutes. *National Audubon Society v. Superior Court*, 33 Cal.3d 419 (1983) at

437-438 quotes favorably from *People v. California Fish Co.*, 166 Cal. 576, a case involving the grant of tidelands, stating:

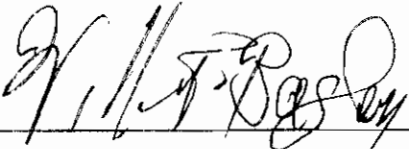
“The court first set out principles to govern the interpretation of statutes conveying that property: “[S]tatutes purporting to authorize an abandonment of ... public use will be carefully scanned to ascertain whether or not such was the legislative intention, and that intent must be clearly expressed or necessarily implied. It will not be implied if any other inference is reasonably possible. And if any interpretation of the statute is reasonably possible which would not involve a destruction of the public use or an intention to terminate it in violation of the trust, the courts will give the statute such interpretation.”

While an absolutist would argue that the Drake’s oyster operation’s “absolute right” exists independent of any Seashore restraints, I am not such an absolutist. A both legal and practical conclusion would and should be a State accommodation to effect the 2009 Congressional action sponsored by Senator Dianne Feinstein – to allow renewal of National Park Services processes leading at least to a continuation of the contested use pursuant to that enactment. To reconfirm again, all of the above, I enclose and attach this letter of March 14, 1966 from the Department of Fish and Game to the Seashore and the Seashore’s reply of March 25 totally agreeing with the Department.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Prepared this 1st day of August, 2011 – to be signed later.

Signed this 2nd day of August, 2011 in San Rafael, California.



William T. Bagley

March 14, 1966

Mr. Leslie P. Arnberger, Superintendent
Point Reyes National Seashore
Point Reyes, California 94956

Dear Mr. Arnberger:

Thank you for your recent letter requesting advice on regulation of the Johnson Oyster Company now within the bounds of Point Reyes National Seashore.

Upon reviewing this matter it becomes apparent that the legislation transferring the submerged lands at Point Reyes to the Federal Government specifically reserved the fishing rights to the State. (AB 1024 (Bagley) Ch. 983, Stats. of 1965).

It thus appears that all State laws and regulations pertaining to shellfish cultivation remain in effect and are applicable to the operations of Johnson Oyster Company. This would include annual rental, privilege taxes, planting requirements, etc. - in short all current sections of the Fish and Game Code, and of Title 14, California Administrative Code, which relate to shellfish cultivation.

We will appreciate your interpretation of this legislation and suggest that, if differences in opinion do exist, you so advise us and that a discussion be arranged between representatives of our agencies.

As you request, we are including copies of the maps and complete descriptions of shellfish allotments numbers 2 and 72 which are now held by the Johnson Oyster Company.

Sincerely,

6027 2/11/66

Director

cc Mr. Johnson
Assemblyman Bagley
Mr. Edgerton
Mr. Savage
Mr. Ralph Scott
Region 3
wmo



UNITED STATES
 DEPARTMENT OF THE INTERIOR
 NATIONAL PARK SERVICE
 POINT REYES NATIONAL SEASHORE
 Point Reyes, California 94956



IN REPLY REFER TO:

LI425

March 25, 1966

MAR 29 1966

Air
 Mr. Robert L. Jones, Deputy Director
 Department of Fish and Game
 1416 Ninth Street
 Sacramento, California 95814

Dear Mr. Jones:

Thank you for your letter of March 14, in regard to the Johnson Oyster Company. This office is quite agreeable with the interpretation your department has placed upon the legislation transferring the submerged lands at Point Reyes to the Federal Government. I have discussed the matter with Mr. Charles Johnson, and this is in accord with his understanding also. Accordingly the Johnson Oyster Company will continue operation under appropriate sections of California Fish and Game Code as in the past.

Copies of this exchange of correspondence are being provided to our Regional Office for their review. Should their conclusion be different from that stated above, I will notify you promptly.

Your cooperation in this matter is greatly appreciated.

Sincerely,

Leslie P. Arnberger
 Leslie P. Arnberger
 Superintendent

MAR 29 1966

EXHIBIT D

July 20, 2011

From: Dr. Corey S. Goodman, P.O. Box 803, Marshall, California

To: Pete McCloskey, Rumsey Farm, P.O. Box 3, Rumsey, California

Re: Analysis of NPS Cameras, Photos, and Logs from Drakes Estero, CA



In response to your request, I have prepared this memo to summarize what I have learned about the National Park Service (NPS) three and a half years of secret cameras, photographs, and detailed logs concerning the impact of the oyster farm – Drakes Bay Oyster Company (DBOC) – on the harbor seals and pups in Drakes Estero.

In summary, the NPS analysis of those photographs (in the form of detailed logs) contradicted the NPS public claims presented to a series of investigations, inquiries, and reviews over more than three years. NPS failed to disclose the key data (photos and logs) to the DOI Inspector General (IG), National Academy of Sciences (NAS), Marine Mammal Commission (MMC), scientific journals, and others (including the Marin County Board of Supervisors, Senator Feinstein, and other federal, state, and local officials). The NAS and MMC panels recommended that such photographic data would have helped resolve the controversy, yet NPS officials remained silent as to their existence.

The existence of the NPS secret camera program was discovered on June 6, 2010 when I first read the NPS May 1 2009 Briefing Statement, which was prepared 13-months prior. I informed the Marine Mammal Commission (MMC) of my discovery of the secret camera program the next day (June 7) at an MMC meeting. NPS officials and scientists (including PRNS Superintendent Cicely Muldoon) were present and participating at that MMC meeting. It took 24 days (until June 30) for NPS to disclose that the program went further than described in the Briefing Statement – in fact, there were not one, but two cameras taking minute-to-minute photos from dawn to dusk every day during pupping season for not one, but three and a half years beginning on May 5, 2007 (not 2008). During summer 2010, NPS officials claimed to the MMC and to the public that the cameras were for wildlife management and that “*images from the cameras have not yet been analyzed in any depth.*” The NPS photos, logs, and other program documentation, including grant proposals, contradict these statements.

Multiple FOIA requests were submitted to NPS. In response to those FOIA requests, 281,000 digital photos were released in late August 2010 and detailed NPS logs of the 2008 and 2009 photos were released on September 2, 2010. [A completely different, and previously undisclosed, 2008 database based upon different photos and volunteer records from a different observation site, was released at the end of 2010.] The NPS logs revealed that NPS had, in fact, carefully analyzed most of the photos. The NPS analyses revealed that the purpose of the cameras was to catch disturbances of the seals by oyster boats – the photos had been analyzed in detail (seemingly exclusively) for oyster boat activity and potential DBOC disturbances and had no mention of wildlife management. Despite NPS efforts, no DBOC disturbances were found. NPS suppressed both the program and its key finding.

Examination of the 281,000 NPS Photos from the Secret Camera

As part of my evaluation of the NPS camera program, I examined many thousands of the 281,000 photographs, guided in large part by the NPS logs that serve as a detailed guide to the photos. NPS volunteers examined nearly every photograph from 2008 and

2009 (the bulk of the photos) and carefully noted every time an oyster boat came or went. When compared to the photographs, the logs are extremely accurate. I verified the logs with the photos, picking dozens of events and comparing the logs vs. the photos. Additionally, I selected random dates to verify and confirm log accuracy. Finally, I used DBOC records from the GPS recorders placed in their boats. I can report that the NPS detailed logs are extremely accurate in terms of when oyster boats came and went during the pupping season in 2008 and 2009. No discrepancies were found.

The NPS logs released to date (for 2008 and 2009, evidently no logs exist for 2007 and 2010) describe 37 days in 2008 and nine days in 2009 during pupping season when DBOC boats came and went from sandbars OB and UEN. The NPS logs describe many additional days of DBOC boat trips to these sandbars in months following the pupping season (i.e., June and July). The NPS logs describe not one single bona fide disturbance during those 46 boat trips to sandbars OB and UEN during pupping season, and many more in the following months. I checked these photos and concur with the NPS volunteers – there are no DBOC disturbances recorded. The DBOC boats stayed over 500 yards from the seals at the OB haul-out (often 600-800 yards away). The NPS-NOAA-CDFG protocols recommend a 100-yard buffer from the harbor seals.

In contrast, the NPS logs describe six instances (one in 2008 and five in 2009) in which kayakers (banned from being on the estero during pupping season) got within the recommended 100-yard buffer of the OB seals and caused 50-100% of the seals to flush into the water. The cameras caught multiple disturbances by kayakers, but none by DBOC oyster boats and workers. Representative examples of these NPS photos can be found in my October 18, 2010 presentation to the California Council on Science and Technology (see <http://www.youtube.com/coreysgocdman>).

NPS Claims Photos are Blurry and Inconclusive – But NPS Logs Show Otherwise

On December 15, 2010, DOI Field Solicitor Gavin Frost, who was directed by DOI to conduct an investigation into allegations of scientific misconduct by NPS, interviewed me for over eight hours at my office. I started to show him many of the NPS photographs and to go through the detailed logs, but Mr. Frost declined to look at the photos and logs with me and said that was not necessary. Mr. Frost told me that Dr. Sarah Allen and Sarah Codde from NPS had both told him a few days earlier that the NPS photographs revealed not a single disturbance of the harbor seals by the oyster farm. Thus, Mr. Frost concluded it was not necessary for me to show him the photos.

Mr. Frost failed to tell me, however, that NPS scientists told him that the photos are blurry and inconclusive. In his report, Mr. Frost accepted the NPS explanation that the three and a half year camera program had little value. However, as described above, Mr. Frost failed to examine the photos and logs with me. As the NPS volunteers who produced the logs realized, the majority of the photos are clear enough to see the seals, boats, and disturbances.

The NPS explanation, as reported by Mr. Frost, is contradicted by the NPS logs. Mr. Frost's report repeated a variety of NPS explanations as to why the photographic data wasn't useful, but the fact remains that the photographs were clear enough for NPS volunteers to carefully examine and catalogue. For the 2008 and 2009 logs, the NPS volunteers had no problem following oyster boats and workers at OB/UEN. The camera filming the OB seals and oyster boats in the lateral channel was placed 300-350 yards

from the OB seals and 1,000-1,200 yards from the DBOC boats and workers. The number of days in 2008 the volunteer examined photos for OB/UEN was 37. The number of days the volunteer said visibility was poor due to fog was 4% of the total. The conclusion from the NPS logs is that around 4% of the time, the weather was foggy and the photos were blurry and inconclusive. The rest of time (i.e., 96% of time), the photos were clear enough to see oyster boats and workers at 3-5X the distance compared to the seals, and the photos were clear enough to see kayakers flush 50-100% of the seals into the water.

The photographs were sufficiently clear to determine that DBOC oyster boats in the west end of the lateral channel (600-800 yards from the seals) were not disturbing the seals, while kayakers in the east end of the lateral channel (less than 100 yards from the seals) were indeed disturbing the seals.

NPS Failed to Disclose the Photos and Logs to the NAS and MMC Review Panels

The first NPS camera began filming on May 5, 2007. The Ocean Studies Board of the National Academy of Sciences began its study in April 2008, as directed by Senator Feinstein and commissioned by NPS, to review all of the data concerning the impact of DBOC and Drakes Estero, to compare them to the NPS document titled *Drakes Estero: A Sheltered Wilderness Estuary*, and to report on whether the NPS had drawn the correct conclusions from these data and studies and presented them correctly. The NAS panel, like the MMC panel that followed them, asked the NPS to provide all NPS harbor seal data, including disturbance data, as mandated by the NAS study charter.

The NAS report, issued on May 5, 2009, concluded that:

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

The NAS panel went on to write that:

*... It is not possible for the committee to resolve the controversy over individual survey sheets, but the focus on these observations highlights how this type of [volunteer] monitoring program is best utilized to indicate potential disturbance problems (that might result in decreased use of a haul-out habitat) rather than to quantify them definitively. **The latter would require a data collection system that could be independently verified, such as time and date stamped photographs.** This verification is especially important in circumstances where there is an indication of a source of disturbance that could lead to a regulatory action, as was the case with disturbances attributed to DBOC. [emphasis added]*

The NAS panel, in their May 5, 2009 report, recommended that time-and-date stamped photographs would provide independent verification of disturbance records and help resolve the controversy over oyster farm disturbances in Drakes Estero.

Marine Mammal Commission panel members made the same suggestion at their meeting on February 21-24, 2010. According to two journalists (Tess Elliott from the Pt. Reyes Light and Andrea Blum from The West Marin Citizen), on February 22, 2010, while visiting the west end of the estero with NPS officials and scientists and MMC panel members, MMC panel member Dr. Michael Walsh pointed across the estero to

the east end, to precisely the location where the cameras were located (unbeknownst to him), and suggested to the senior NPS scientist (Dr. Sarah Allen) that cameras at that location with time and date-stamped photographs would help resolve the controversy concerning potential disturbances by the oyster farm. The NPS scientist remained silent. During six days of discussion – two with the NAS review panel and four with the MMC review panel – NPS officials and scientists – including then PRNS Superintendent Don Neubacher and PRNS senior scientist Dr. Sarah Allen – remained silent, even though they had just such a camera system fully operational.

The next day of the MMC panel meeting, on February 23, 2010, Dr. Michael Walsh (the same panel member who recommended remote cameras the day before), asked Dr. Allen how she might improve the observation of potential disturbances. She answered:

*“If I were to design it as a disturbance study, I'd have observers in multiple places, not just one observation site ... I'd observe [the seals] from multiple sites, hopefully less than a quarter mile [from the seals]. You'd be using scopes, but also cameras for documentation ... **I think observations for other wildlife have been tracked with remote cameras, with 24 hour, minute intervals or something like that. I've used such cameras in Bolinas Lagoon.** That's how we documented the disturbances so you can see progressive reaction and then response. That would be one way I would intensify trying to tease out the sources of disturbance, what the effect is, and the frequency, which I think is a super valid point that was brought up about the frequency -- that Peter brought up, but you're not going to detect that with the sampling we're doing now. We're only out there two to three, four days a week and only for a brief period of time because our focus is on monitoring the population.”*

Thus, in answering how she might design a study of potential disturbances to the harbor seals, Dr. Allen described how she would want volunteers at multiple sites (some less than a quarter mile or 440 yards from the seals) and cameras taking minute-by-minute, time and date-stamped photographs. In describing to the MMC panel what she would like to have, Dr. Allen neglected to tell them that in 2008, she had all of those elements in place -- volunteers at two different locations (one within 350 yards of the seals), and two cameras taking minute-by-minute, time and date-stamped photographs. As of February 2010 when she made her statement to the MMC panel, Dr. Allen had been sent both the 2008 and 2009 detailed logs of the NPS photos.

Dr. Allen also failed to tell the MMC panel that the NPS photographs and their detailed analyses showed no DBOC harbor seal disturbances. Indeed, the photos and logs not only contained no data that would confirm the NPS claims, but quite the opposite, the photos and logs refuted these NPS claims. Dr. Allen had, in fact, designed and conducted a disturbance study, and found no DBOC harbor seal disturbances.

Remaining Controversy – Photos Show No Seals Getting Flushed by DBOC Boat

Of the three and a half years of photos, only those from May 8, 2007 remain controversial. Based upon responses to FOIA requests, according to NPS, no log exists for the 2007 photos. May 8, 2007 was a Tuesday. Every Tuesday, as mandated by California Department of Public Health regulation, DBOC sends a boat down the main channel towards the mouth of Drakes Estero to collect meat samples near the estero mouth for biotoxin analysis (a routine food safety standard). The DBOC boat stays well

over 200 yards from the OB seals. On that day, one of the volunteers in the normal harbor seal monitoring program claimed that at 8:45 am that morning, the oyster boat disturbed seals at three different haul-out sites (UEN, OB, and UEF—over a mile apart) and caused many seals to flush into the water at each site. However, the photos show that not a single seal flushed into the water as the boat passed.

Dr. Tim Ragen, Executive Director, Marine Mammal Commission, reviewed this allegation and the photos with Kevin Lunny (DBOC owner) and me when he met with us on June 7, 2011. He agreed that no seals were flushed into the water by the DBOC boat on May 8 2007, contrary to the volunteer report.

The Environmental Action Committee of West Marin, Gordon Bennett (formerly of the Sierra Club), and Dr. Frances Gulland (one of the Marine Mammal Commissioners who oversee Dr. Ragen) have all concluded that the seals were disturbed that morning in that some of them evidently moved their heads as the boat passed. Dr. Ragen made the same claim when we met on June 7, 2011, but he admitted that he was unable to show any disturbance when we projected and enlarged the photographs and looked at them one-by-one.

Dr. Ragen agreed that:

- (i) no seals were flushed into the water by the DBOC boat on May 8, 2007;
- (ii) seals continued to haul out during the ten minutes before (3 seals) and ten minutes after (6 seals) the DBOC boat passed by the seals, exactly the opposite of what one would expect during a disturbance; and
- (iii) this indicated there was no disturbance, since seals flush into the safety of the water rather than haul out during a disturbance.

Conclusion

A review of the NPS camera program at Drakes Estero leads to a single conclusion: From 2007-2010, four harbor seal pupping seasons, the NPS secret cameras took 281,000 NPS photos and NPS volunteers prepared logs and wrote reports from those photos, all of which were withheld from Federal and State agencies, elected officials, and formal investigations pending during those four years. Those NPS photos and logs provided clear data that contradicted NPS claims and accusations – there is not a single photo validating the repeated NPS accusation of environment harm or disturbance to the harbor seals by the oyster farm.

How I Got Involved in This Issue

On April 28, 2007, Steve Kinsey, then President of the Marin County Board of Supervisors, first asked me to look at National Park Service science concerning the impacts of DBOC on Drakes Estero, and to come report on that science at a Marin County hearing on May 8, 2007. In my testimony at that hearing, I said:

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

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

Brief Biosketch

Dr. Corey Goodman is a scientist, educator, and biotech entrepreneur. With a B.S. from Stanford University and Ph.D. from U.C. Berkeley, he spent 25 years as professor of biology at Stanford and Evan Rauch Chair of neurobiology at U.C. Berkeley, where he was Howard Hughes Medical Institute Investigator and co-founder and director of the Wills Neuroscience Institute. He is currently on the faculty at U.C. San Francisco. He is an elected member of the National Academy of Sciences, American Academy of Arts and Sciences, and American Philosophical Society, and recipient of many honors including, amongst others, the Alan T. Waterman Award, Canada Gairdner Award, March-of-Dimes Prize, and Reeve-Irvine Research Medal.

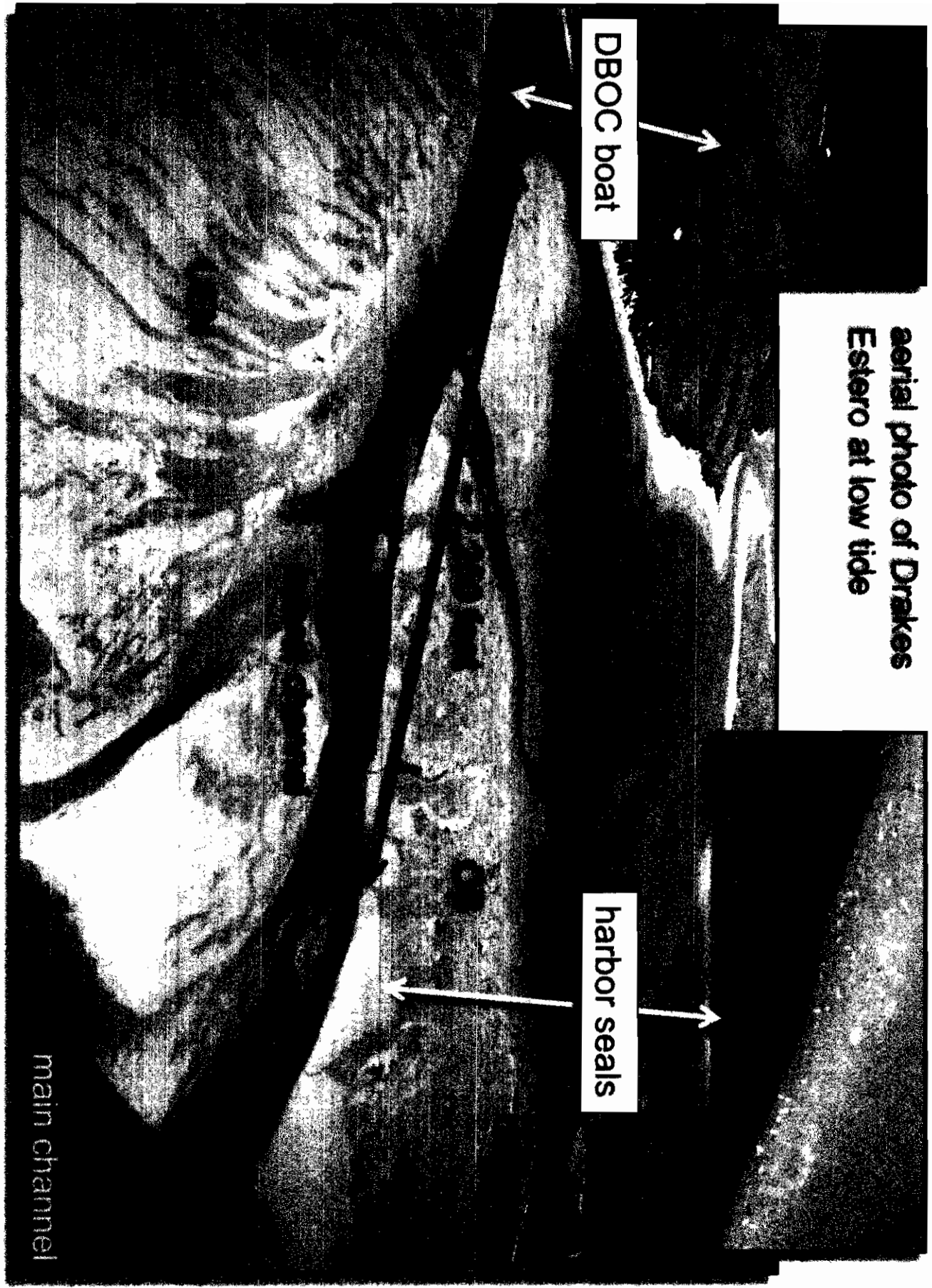
Dr. Goodman moved into biotechnology to help apply biomedical discoveries to human and environmental health. He co-founded Exelixis, Renovis, and Second Genome, was CEO of Renovis, and President and founder of Pfizer's Biotherapeutics and Bioinnovation Center. While at Pfizer, he designed a new entrepreneurial R&D model with a focus on fostering innovation in drug discovery for major unmet medical needs.

He is Managing Director and co-founder of venBio LLC, a strategic capital biotech investment firm based on a new model of strategic collaboration with pharmaceutical and biotechnology companies. He is Chair of the Board of five biotech companies, Board member of two others, and advises other public and private companies.

Amongst his many public policy roles, Dr. Goodman is on the Board of the California Council on Science and Technology, Pacific Institute, Bay Area Science and Innovation Consortium, QB3 (UCSF-UCB-UCSC) Advisory Board, and is former Chair of the National Research Council's (NAS) Board on Life Sciences. He is on the board of a number of biomedical disease foundations and editorial boards of scientific journals.

Dr. Goodman has lived in West Marin since 1993. He and his wife Marcia Barinaga live on the Barinaga Ranch in Marshall (www.barinagaranch.com) where Marcia oversees their organic pastures, farmstead sheep dairy, and produces artisanal sheep cheese in her family's Basque tradition.

aerial photo of Drakes Estero at low tide



DBOC boat

harbor seals

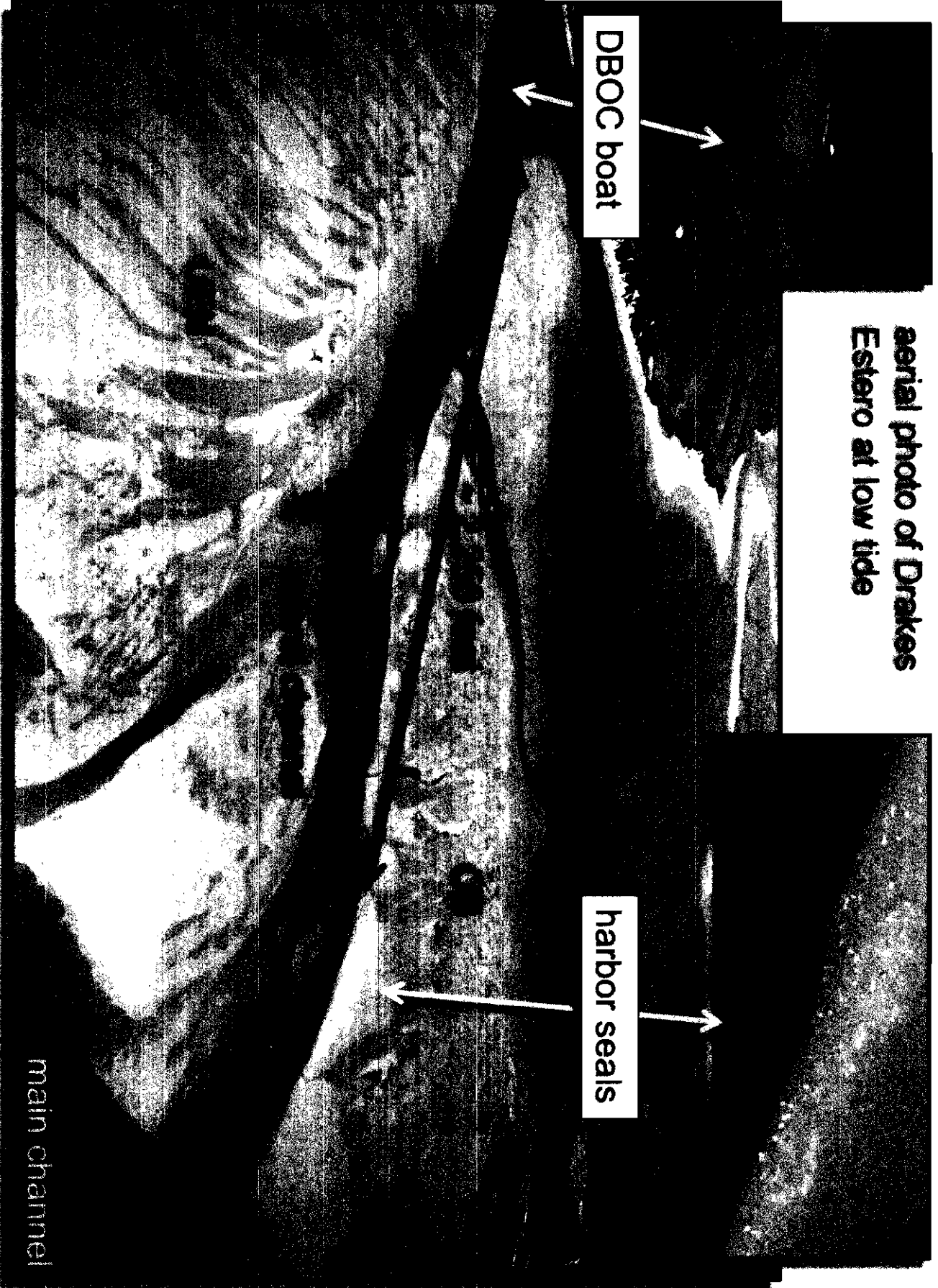
main channel

aerial photo of Drakes Estero at low tide

DBOC boat

harbor seals

main channel



For a map of the Point Reyes National Seashore, go to www.nps.gov/pore and click on "View Map."

EXHIBIT E