

March 26, 2012

From: Dr. Corey S. Goodman, elected member, National Academy of Sciences

To: Secretary Ken Salazar, Department of the Interior

Re: Falsified data in the NPS Draft Environmental Impact Statement and Peer Review

- (1) REQUEST FOR THE DEPARTMENT OF THE INTERIOR TO INVESTIGATE SCIENTIFIC MISCONDUCT BY EMPLOYEES OF THE NATIONAL PARK SERVICE (NPS) AND VANASSE HANGEN BRUSTLIN (VHB, EIS CONTRACTOR)
- (2) REQUEST FOR THE DEPARTMENT OF THE INTERIOR TO DIRECT ATKINS (PEER REVIEW CONTRACTOR) TO WITHDRAW THEIR REPORT ON THE DEIS
- (3) REQUEST FOR THE DEPARTMENT OF THE INTERIOR TO DIRECT NPS TO WITHDRAW THE DEIS AND CANCEL THE VHB CONTRACT

Dear Secretary Salazar:

This letter is a request for an immediate investigation by the Department of the Interior (DOI) based on allegations that both National Park Service (NPS) and contractor Vanasse Hangen Brustlin (VHB) employees violated the Department of the Interior Scientific Integrity Policy as well as other federal government rules, regulations, and codes including the Federal Policy on Research Misconduct (OSTP), and in so doing committed scientific misconduct.

It is alleged that the Draft Environmental Impact Statement (DEIS) contains falsified data in Table 3-3 of the soundscape section. Table 3-3 is intentionally deceptive. The conclusions in the soundscape section are false as a result of Table 3-3.

If you agree that key data in Table 3-3 of the DEIS were falsified, then I request that you direct:

- a) ATKINS to publicly withdraw their peer-review report;
- b) NPS to publicly withdraw their DEIS;
- c) Interior and NPS to cancel the Vanasse Hangen Brustlin contract.

With respect to the soundscape data in Table 3-3 and the peer-review of that section, it appears that the peer-review contractor ATKINS, their subcontractor RESOLVE, and their peer-reviewer at Cornell University acted properly and professionally and that the scheme to deceive and distort the DEIS and the ATKINS peer review came from unnamed individuals at NPS and/or VHB.

It is alleged that unnamed NPS and/or VHB employees:

1. Included falsified data in Table 3-3 of the soundscape section of the NPS DEIS.
2. Included noise measurements from a 1995 Kawasaki 750 cc 2-stroke 70 HP Jet Ski at 2 ft as if the data came from a DBOC 4-stroke 20 HP oyster boat at 50 ft. The Jet Ski noise was measured in 1995 by Noise Unlimited, Inc. on behalf of the New Jersey State Police for a study of boat noise along the New Jersey shore.
3. Included Jet Ski noise measurements taken 3,000 miles away and 16 years ago, and misrepresented them in the NPS DEIS as if they came from Drakes Estero.
4. Included noise measurements from heavy Federal highway construction equipment as if the data came from DBOC onshore oyster equipment.
5. Included rivet-buster noise measurements and misrepresented them in the NPS DEIS as if they came from a Drakes Bay Oyster Company oyster tumbler.
6. Came to false conclusions in the text based on the falsified data in Table 3-3.
7. Revised the legend and labeling of Table 3-3 between the June 2011 non-public version of the DEIS and the September 2011 public version in such a way as to intentionally deceive readers, including the public and peer-reviewers.
8. Deceived one key reader -- the peer-reviewer, Dr. Christopher Clark of Cornell.
9. Deceived another reader – DOI Scientific Integrity Officer Dr. Ralph Morgenweck.
10. Deceived the public, and remained silent as others cited these false data in mass mailings, on web sites, and in interviews as a reason to eliminate the oyster farm.

Unnamed NPS and VHB employees apparently deceived the Department's Scientific Integrity Officer, Dr. Ralph Morgenweck, and they intended to deceive you, since the NPS DEIS is being prepared to ultimately present to you as a guide in your decision-making concerning the oyster farm lease renewal.

We have all heard the chorus from NPS supporters about noisy oyster boats disturbing wildlife in Drakes Estero. NPS and VHB employees knew or should have known that NPS had no such acoustic data from Drakes Estero, and so data were substituted from a report done for the New Jersey State Police in 1995 including measurements from a loud Jet Ski along the New Jersey shores.

Surely it is time to put a stop to this repeated pattern of deception. Millions of dollars of taxpayer money have been spent to deceive the public, and to fool you. In February 2011, you stated:

“Because robust, high quality science and scholarship play such an important role in advancing the Department's mission, it is vital that we have a strong and clear scientific integrity policy. This policy sets forth clear expectations for all employees - political and career - to uphold the principles of scientific integrity ...”

Unnamed NPS and VHB employees violated your policy, and did so recklessly. It is time for decisive action to show the public that you meant what you said when you issued your Scientific Integrity Policy. It is time to bring this taxpayer-funded pattern of deception to a stop. Your Department should free itself from NPS false science.

Dr. Morgenweck, Interior's Scientific Integrity Officer, who commissioned the ATKINS peer review of the DEIS "*in recognition of high interest in the science related to Point Reyes,*" is quoted in the DOI press release as saying:

"The peer-review accomplished exactly what we were seeking – that is, specific recommendations on how to improve the final environmental impact statement to make it a better science product."

To the contrary, the falsified data and intentional deception by NPS and VHB employees made a mockery of the NEPA process at NPS, and provide one more reason for the "... *high interest in the science related to Point Reyes.*"

Given the involvement of your Scientific Integrity Officer in commissioning and releasing the ATKINS peer review report, and the inclusion of falsified data in the NPS DEIS that taints both the DEIS and the ATKINS report, you will have to decide whether this scientific misconduct investigation can be handled by Dr. Morgenweck or should be handled by another agency. You are unlikely to know ahead of time who at Interior, NPS, or ATKINS knew that the NPS data in Table 3-3 were false and deceptive.

Secretary Salazar: you should determine which:

- a. NPS employees knew that Table 3-3 contained falsified and intentionally deceptive data,
- b. VHB employees knew that Table 3-3 contained falsified and intentionally deceptive data,
- c. NPS and/or VHB employees were involved in revising Table 3-3 between the June 2011 non-public version and the September 2011 public version,
- d. Whether anyone at Interior, ATKINS, RESOLVE, or Cornell University knew of this falsified data, or whether they were all victims of deception.

If you conclude that NPS and VHB employees did indeed commit scientific misconduct, you should take the appropriate action, consistent with your policy as issued in the Department's January 28, 2011 policy on Integrity of Scientific and Scholarly Activities, to ensure that scientific integrity is restored at NPS, and in the words of President Obama, to "*restore science to its rightful place.*"

Moreover, beyond simply a finding of misconduct, you must consider the NEPA process, and how it has been tarnished. It has been compromised by falsified science. The ATKINS peer-review report needs to be withdrawn. The NPS DEIS needs to be withdrawn. Both are tainted by falsified data. Both are victims of intentional deception.

The section of the DEIS on the soundscape analysis is based upon falsified and intentionally deceptive data in Table 3-3. A Kawasaki 750 cc 2-stroke 70 HP Jet Ski at 2 feet is not a 20 HP 4-stroke DBOC oyster boat at 50 feet. A rivet buster used for federal highway construction is not a DBOC oyster tumbler with a small electric motor. Table 3-3 contains falsified data. It is intentionally deceptive.

Both NPS and VHB employees were involved in writing, revising, or reviewing this section, and they placed falsified and intentionally deceptive data in the NPS DEIS. Both NPS and VHB employees were involved in the preparation of approval of revisions made between the June non-public version of the DEIS and the September public version of the DEIS.

The legend and labeling of Table 3-3 were intentionally revised between the June non-public version of the DEIS and the September public version in such a way as to deceive the public, elected officials, and peer-reviewers. Key words were changed, and other descriptions of the sources for sound estimates deleted.

These actions are consistent with a motivation to deceive the reader, and indeed one key reader, Prof. Christopher Clark (Cornell, the peer-reviewer of this section) was deceived into believing that the NPS data were from DBOC.

If NPS and VHB employees would falsify the soundscape data, then the public cannot trust anything else they have produced. You must assume that the entire document is biased and prejudiced, and thus reject it and instruct NPS to cancel the VHB contract.

Given the seriousness of the falsified data in the soundscape section of the DEIS, and the involvement of multiple NPS and/or VHB employees in this deception, the entire DEIS must be viewed as tainted and biased and thus needs to be withdrawn. Neither NPS nor VHB can be trusted to produce an honest document. NPS and VHB employees have committed scientific misconduct while producing the NPS DEIS.

Below are the details of these allegations.

(1) REQUEST FOR THE DEPARTMENT OF THE INTERIOR TO INVESTIGATE SCIENTIFIC MISCONDUCT BY EMPLOYEES OF THE NATIONAL PARK SERVICE (NPS) AND VANASSE HANGEN BRUSTLIN (VHB)

- a. This request pertains to both NPS and Vanasse Hangen Brustlin (VHB, the EIS contractor) employees responsible for writing, revising, or reviewing the NPS Draft Environmental Impact Statement (DEIS) for the Drakes Bay Oyster Company Special Use Permit.
- b. The focus of this request is limited to the NPS DEIS section on soundscapes (noise measurements), and on those NPS and VHB employees who were involved in writing, revising, or reviewing the soundscape and noise section, and in particular Table 3-3 and citations in the text to the data presented in Table 3-3.
- c. This request also pertains to anyone involved in commissioning or reviewing the ATKINS peer-review of the DEIS who had been involved in writing, revising, or reviewing the soundscape (noise) section of the DEIS, or who had knowledge about the data in the DEIS soundscape section.
- d. The section of the DEIS on the soundscape analysis, and in particular the key data as contained in Table 3-3, contains falsified and intentionally deceptive data from NPS.
 - i. Table 3-3 in the NPS DEIS included noise measurements falsely attributed as “*representative*” of a 20 HP 4-stroke DBOC boat in Drakes Estero when they are in fact from a Noise Unlimited 1995 report for the New Jersey State Police on measurements of a Kawasaki 750 cc 2-stroke 70 HP Jet Ski from 3,000 miles away and 16 years ago.
 - ii. Table 3-3 in the NPS DEIS included a “*representative sound level*”

at 50 feet” measurement for the noise from a DBOC 20 HP 4-stroke DBOC boat as 71 dBA and attributes this number to “*Noise Unlimited, Inc., 1995.*” In the Noise Unlimited 1995 report, there is only one measurement at 71 dBA (out of 18 measurements listed), and that is for “*Personal Watercraft No. 1, Kawasaki Jet Ski 750 STS.*” That measurement of 71 dBA is at the “*static level dBA.*” The static measurements, according to the Noise Unlimited report, were made of “*the engine at idle with the microphone located 4 ft above the water line and 2 ft behind the transom of the boat*” and not at the 50 feet as described in Table 3-3 in the NPS DEIS. Thus, the number and description of the number in Table 3-3 were falsified. The 71 dBA was from a 750 cc 2-stroke 70 HP Jet Ski at 2 feet, not the 20 HP 4-stroke DBOC boat at 50 feet.

- iii. Table 3-3 in the NPS DEIS included noise measurements falsely attributed as “*representative*” of DBOC oyster farm equipment (fork lift, pneumatic drills, and oyster tumbler) at the onshore facility along Drakes Estero when they are in fact taken from a Federal Highway Administration Construction User’s Guide 2006 report on measurements of large highway construction equipment.
- iv. Table 3-3 in the NPS DEIS included a “*representative sound level at 50 feet*” measurement for the noise from a DBOC “*oyster tumbler*” as 79 dBA and attributes this number to “*FHWA 2006.*” In the Federal Highway Administration 2006 report, there are five pieces of highway construction equipment with a measurement of 79 dBA: concrete mixer truck, drill rig truck, frontend loader, rivet buster/chipping gun, and ventilation fan. The FHWA does not list “*oyster tumbler.*” That number was falsified. There is no category “*oyster tumbler*” let alone a measurement from DBOC. The closest equipment would be “*rivet buster*” with a pneumatic engine, a far cry from “*oyster tumbler*” with a small 12-volt electric motor.
- v. Actual measurements of DBOC boats and equipment taken by ENVIRON were submitted to NPS on December 9, 2011 at the direction of DBOC. All of the real measurements of DBOC boats and equipment were significantly lower than the false numbers in the NPS DEIS. These data were apparently withheld from ATKINS and the peer-reviewer, Dr. Christopher Clark.
- vi. The measurements falsely attributed to DBOC from the Jet Ski and highway construction equipment 3,000 miles away were overestimates by one to three orders of magnitude (12X to 825X) greater than the actual measurements of DBOC boats and equipment by ENVIRON.
- vii. For example, the 20 HP oyster boat that was listed as 71 dBA is actually 58 dBA (X19 difference). The oyster tumbler that was listed as 79 dBA was actually 50 dBA (X825 difference).
- viii. The NPS DEIS text falsely concluded that “*DBOC operations contribute between 71 and 85 dBA of noise*” and that DBOC oyster

boats exceed the NPS regulation of 60 dBA, when in fact DBOC operations contribute between 58 to 70 dBA of noise and DBOC boats in specific (58-60 dBA) do not exceed the NPS regulation.

- ix. At no time between January 1, 2005 and the present has NPS ever communicated with DBOC about possible violations of noise standards as provided for by Director's Order #47.
- e. The legend and labeling of Table 3-3 in the NPS DEIS was revised between the June 2011 non-public version of the DEIS and the September 2011 public version of the DEIS in such a way as to intentionally deceive the public, press, elected officials, and peer-reviewers. Words were changed or deleted between the non-public and public versions, and it is difficult to reconcile any motivation other than to deceive the reader.
- i. The word "*estimated*" was replaced with "*representative*" thereby giving the impression that the measurements came from DBOC.
 - ii. The "*Source for sound estimates*" was replaced with "*Sources*" and included "*DBOC [Lunny], pers. comm., 2011h, Noise Unlimited, Inc, 1995; FHWA 2006*" thereby giving the impression that the measurements from Lunny, Noise Unlimited, and FHWA were of DBOC boats and equipment.
 - iii. The full citation for the Noise Unlimited 1995 report was deleted: "*Boat Noise Tests Using Static and Full Throttle Measurement Methods for the New Jersey State Police.*" Readers thus were falsely led to believe that Noise Unlimited measurements were of oyster farm boats at Drakes Estero.
 - iv. The full citation for the FHWA 2006 report was deleted: "*FHWA Construction Noise User's Guide.*" Readers thus were falsely led to believe that FHWA measurements were of oyster farm equipment at Drakes Estero.
 - v. Given the title of Table 3-3 ("*Noise Generators at DBOC*"), these revisions falsely led readers and the peer-reviewer to believe that the numbers were representative measurements of the specified DBOC equipment including motorboats, forklift, pneumatic drills, and oyster tumbler, when in fact these measurements were from a loud Jet Ski and highway construction equipment 3,000 miles away.
 - vi. The falsified data in Table 3-3 were echoed in the text where it states that "*noise sources at DBOC are summarized in table 3-3. At 50 feet from the receptors, DBOC operations contribute between 71 and 85 dBA of noise*" when NPS had no such data from DBOC boats and equipment and no basis for making any statement about noise contributions from DBOC operations.
 - vii. This is one of the very few cases in the entire DEIS in which NPS provides so-called data to conclude a negative impact of DBOC on the environment, and in this case the data are falsified and presented in an intentionally deceptive fashion to falsely lead the

reader to believe that NPS indeed has measurements of DBOC boats and equipment.

- viii. NPS employees apparently remained silent while the ATKINS peer-reviewers and Department of the Interior reviewers, including Interior's Scientific Integrity Officer, believed that the DEIS found that the DBOC oyster boats were not only noisy but violated NPS standards and had a negative impact on wildlife, when NPS employees knew that no such data existed.
- ix. NPS employees apparently remained silent during 2011 and 2012 while NPS supporters (e.g. Sierra Club, NRDC, NPCA, NWF, CBD, EAC, Audubon Society, and others) told their members in mass mailings and web postings, and were quoted in the press as saying that the DEIS showed that the DBOC oyster boats are noisy and having a negative impact on wildlife, when NPS employees knew that NPS has no such data.
 - 1. The Sierra Club and the National Parks Conservation Association both cited "*noisy motorboats*"
 - 2. The Center for Biological Diversity cited "*3700 disruptive and noisy motorboat trips per year ...*"
 - 3. The National Wildlife Federation cited "*thousands of noisy motorboats*"
 - 4. NWF and Environmental Action Committee of West Marin cite impacts of "*soundscapes due to the use of heavy machinery and repeated use of motor boats*"
 - 5. The Marin Audubon Society cites "... *noise associated with boat motors, oyster tumblers, pneumatic drills, and daily customer traffic ...*"
 - 6. The Audubon Society, Center for Biological Diversity, Environmental Action Committee of West Marin, NPCA, Natural Resources Defense Council, NWF, and Sierra Club supported the "*Save Point Reyes Wilderness*" web site that (incorrectly) cited "*noise from the motorboats*" concerning DBOC
- f. The public was deceived by the DEIS soundscape section. Many of the public comments focused on the noisy motorboats and the negative impact on the soundscape, when in fact no such data exist. Clearly, the public has been deceived by the falsified data and claims, and the continual repetition of these false claims by NPS supporters while NPS employees apparently remained silent.
 - i. Here are some examples from the public comments:
 - "*As the DEIR makes clear, the oyster company's continued operation would have long-term major adverse impacts on the natural soundscape and wilderness.*"
 - "*... the disruption of the natural soundscapes in the otherwise pristine*

Estero.”

“... restoring a more natural soundscape.”

“...noise associated with boats and the oyster farming would be removed under alternative A, restoring a more natural soundscape within Drakes Estero.”

“Soundscapes due to the use of heavy machinery and repeated use of motorboats ...”

“... short and long-term adverse impacts on ... soundscapes ...”

“... noise associated with boat motors, oyster tumblers, pneumatic drills, and daily customer traffic would be removed under alternative A, thus restoring a more natural soundscape within Drakes Estero.”

“... making noise, running motorboats ...”

“... noisy and polluting motorboats ...”

“... stop the noise generated by the operation ...”

“... noise disturbance to exhausted migratory birds ...”

“Noise and disturbance related to operation of a commercial mariculture business most certainly impacts waterbirds ...”

“... boats are incredibly noisy ...”

“... 3700 disruptive and noisy motorboat trips per year ...”

“... noisy and polluting motorboats ...”

“... noisy motorboats ...”

“... sound of the motorboats ...”

“... thousands of noisy motor boats.”

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

- g. Prof. Christopher Clark, bio-acoustic expert from Cornell University, peer-reviewed the NPS soundscape data for the ATKINS peer-review report. Dr. Clark was deceived into believing that the data in Table 3-3 were from field measurements of DBOC boats and equipment at Drakes Estero.
 - i. Dr. Clark, based on his review in the ATKINS report, was intentionally deceived – 1995 data from a Kawasaki 750 cc 2-stroke 70 HP Jet Ski were presented by NPS as if they were 2011 data from a DBOC 20 HP oyster boat in Drakes Estero, and Dr. Clark’s review makes clear that he thought the measurements were from DBOC boats and equipment.
 - ii. Dr. Clark wrote in his review: *“Table 3-3 shows noise level values within close proximity to 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. ... The document concludes that these measures are reasonable representations of the existing acoustic*

environment by which to make comparisons.”

- iii. Based upon the deceptive presentation of data in the DEIS, Dr. Clark wrote in his review: *“Overall I found that the Soundscape section provided compelling support for its conclusion ...”*
 - iv. Dr. Clark wrote in his review: *“the scientific evidence presented leads me to conclude that this DEIS is robust ...”*
 - v. Dr. Clark concluded that *“there is ample acoustic scientific evidence by which the DEIS can determine that DBOC noise-generating activities have negative impacts”* when in fact the data are from Jet Skis and highway construction equipment from 3,000 miles away.
 - vi. The ATKINS team summarized Dr. Clark’s review and wrote: *“The soundscape reviewer (Clark) found the scientific interpretations and analyses in the DEIS to be reasonable and adherent to standard techniques and metrics.”* It is presumed that the ATKINS team did not know that these NPS data had been falsified. This needs to be verified by questioning of the ATKINS/RESOLVE team members.
 - vii. When Dr. Clark was shown, on March 21 (two days after DOI publicly release the ATKINS report), that the NPS data in the DEIS were from Jet Skis and highway construction equipment 3,000 miles away and not from DBOC boats and equipment, he said *“no way!”* He commented *“is this a joke?”* and then said *“I assumed those data were from field measurements at Drakes Estero.”*
 - viii. Dr. Clark was not given a copy of the ENVIRON report. He was unaware of its existence. He thought the NPS data in the DEIS were from oyster boats and equipment in Drakes Estero.
 - ix. Upon learning about the true source of the NPS data in the DEIS and the ENVIRON data, Dr. Clark reversed his primary conclusion and wrote by email that he does *“not believe that these activities have a biologically significant impact on wildlife ...”*
 - x. Dr. Clark was asked by ATKINS to review the NPS soundscape data in the DEIS. After seeing the source of the DEIS data vs. the real data in the ENVIRON report on March 21, he changed his conclusion from a finding of negative impact of wildlife to one of no significant impact on wildlife.
- h. This falsification of data, and intentionally deceptive presentation of the falsified data, by unnamed NPS employees who wrote, revised, or reviewed the soundscape (noise) section of the DEIS constitutes scientific misconduct under the Department of the Interior Scientific Integrity Policy, and warrants an immediate investigation.
 - i. The Department of the Interior needs to ask: who knew what, and when did they know it? How many NPS employees were involved in this intentional deception? Who gave the instructions? Which employees revised Table 3-3? How many NPS employees knew that these data in the DEIS were not from DBOC and Drakes Estero? Who instructed them

to falsify these data? Why did they do this? Were any who were involved in the falsification informed that their superiors wanted them to falsify these data?

- j. This falsification of data by unnamed NPS employees led to the apparent deception of high-level officials in the Department of the Interior, including Dr. Ralph Morgenweck, Interior's Scientific Integrity Officer. Dr. Morgenweck, who commissioned the independent peer review of the DEIS "*in recognition of high interest in the science related to Point Reyes,*" is quoted in the DOI press release as saying: "*The peer-review accomplished exactly what we were seeking – that is, specific recommendations on how to improve the final environmental impact statement to make it a better science product.*"
- k. Given the involvement of the Scientific Integrity Officer in commissioning and releasing the ATKINS peer review report, and the inclusion of falsified data in the NPS DEIS that tainted the ATKINS report, the Secretary will have to decide whether this scientific misconduct investigation can be handled by DOI's Scientific Integrity Office or should be investigated by another Department (outside DOI).

(2) REQUEST FOR THE DEPARTMENT OF THE INTERIOR TO DIRECT ATKINS TO WITHDRAW THEIR REPORT ON THE DEIS

- a. NPS provided ATKINS, the peer review contractor, with falsified and deceptive soundscape data in the DEIS. The soundscape section of the ATKINS peer-review report was written by Prof. Christopher Clark. Dr. Clark's section is tainted by the falsified and deceptive data from NPS.
 - i. NPS failed to disclose to ATKINS and Prof. Clark that noise measurements falsely attributed to DBOC boats in Drakes Estero were in fact from a Noise Unlimited 1995 report for the New Jersey State Police on measurements of a Kawasaki 750 cc 2-stroke 70 HP Jet Ski from 3,000 miles away and 16 years ago.
 - ii. NPS failed to disclose to ATKINS and Prof. Clark that noise measurements falsely attributed to DBOC equipment in Drakes Estero were in fact taken from a Federal Highway Administration Construction User's Guide 2006 report on measurements of large highway construction equipment.
 - iii. The entire soundscape section of the ATKINS peer-review is compromised by this false NPS data and must be withdrawn. How did NPS allow ATKINS to mislead Dr. Clark? How did ATKINS not know that the noise data were not from DBOC? How did NPS and Interior review the ATKINS peer-review and allow Dr. Clark's review to stand?
 - iv. How did NPS allow Interior to issue a press release with the ATKINS report quoting the report as stating that "*there is no fundamental flaw with the larger scientific underpinnings of the*

DEIS” when in fact the soundscape data had been falsified?

- v. How did NPS allow Interior to issue a press release quoting the ATKINS report as proposing that NPS conduct a “*sound source verification*” when there are no existing NPS data to be verified since all of the NPS data in the DEIS come from a Jet Ski or construction equipment from 3,000 miles away?

(3) REQUEST FOR THE DEPARTMENT OF THE INTERIOR TO DIRECT NPS TO WITHDRAW THE DEIS AND CANCEL THE VHB CONTRACT

- a. The section of the DEIS on the soundscape analysis is based upon falsified and intentionally deceptive data from NPS. A 750 cc 2-stroke 70 HP Kawasaki Jet Ski at 2 feet is not a 20 HP 4-stroke DBOC oyster boat at 50 feet. A rivet buster used for federal highway construction is not a DBOC oyster tumbler with a small electric motor. Measurements from 3,000 miles away and 16 years ago were placed in Table 3-3 and cited as “representative” of specific “Noise Generators at DBOC.” This table is falsified. It is intentionally deceptive. This is scientific misconduct.
- b. Both NPS and VHB employees were likely involved in writing, revising, or reviewing this section, and they placed falsified and intentionally deceptive data in the NPS DEIS.
- c. Both NPS and VHB employees were likely involved in the revisions that took place between the June non-public version of the DEIS and the September public version of the DEIS. The legend and labeling of Table 3-3 were intentionally revised between the June non-public version of the DEIS and the September public version in such a way as to deceive the public, elected officials, and peer-reviewers. Key words were changed, and other descriptions of the sources for sound estimates deleted. These actions are consistent with a motivation to deceive the reader, and indeed one key reader, Prof. Christopher Clark (Cornell, the peer-reviewer of this section) was deceived into believing that the NPS data were from DBOC.
- d. This falsification of data, and intentionally deceptive presentation of the falsified data, by unnamed NPS and VHB employees who wrote, revised, or reviewed the soundscape (noise) section of the DEIS constitutes scientific misconduct under the Department of the Interior Scientific Integrity Policy, and warrants an immediate investigation.
- e. The NPS soundscape data represent some of the only data in the DEIS. These data have been highly cited by NPS supporters among the NGOs that are advocating elimination of DBOC. NPS and VHB falsified these data, and then sat back silently as the NPS supporters touted these soundscape data in multiple mass mailings, web sites, and interviews with the press.
- f. The fact that these key data were falsified leads to the necessary question: what other data or information in the NPS DEIS were falsified by NPS or VHB employees, and what other sections are biased and

prejudiced? If NPS and VHB employees would falsify the soundscape data, then other statements and data in the DEIS cannot be trusted. We must assume that the entire document is biased and prejudiced, and thus reject it and ask that Interior instruct NPS to cancel the VHB contract.

- g. The falsification of the data in Table 3-3 was blatant. A Jet Ski was called an oyster boat. A rivet buster was called an oyster tumbler. Measurements from 3,000 miles away, and 16 years ago, were called DBOC measurements. Measurements of Jet Skis and construction equipment much louder than DBOC boats and equipment were put into the table to deceive, and to show that DBOC boats exceeded NPS regulations, when in fact they do not. False conclusions were drawn. The peer-review process was contaminated. There was nothing subtle about what was done concerning Table 3-3 and the soundscape section. It suggests that multiple employees at NPS and VHB were involved in writing, revising, and reviewing the soundscape section of the DEIS.
- h. Given the seriousness of the falsified data in the soundscape section, and the involvement of multiple NPS and VHB employees in this deception, the entire DEIS must be viewed as tainted and biased and thus needs to be withdrawn. Clearly, neither NPS nor VHB can be trusted to produce a responsible and honest document. NPS and VHB employees have committed scientific misconduct in the process of producing the NPS DEIS. An independent agency needs to take over this process and investigation, and NPS needs to formally and publicly withdraw the DEIS.

Concluding comments

The NPS DEIS created the façade that noise from DBOC boats caused environmental harm to wildlife. First, NPS put falsified data – from 3,000 miles away – in the key table in the DEIS. Second, NPS used those false data to conclude that DBOC boats violated a NPS standard (although DBOC had never been so notified). Third, NPS let the public believe that the so-called noisy DBOC motorboats were disturbing the wildlife, including seals and birds.

NPS created a house of cards. First, the acoustic data in the DEIS were not from DBOC. Second, the real data from the ENVIRON report show that the DBOC boats do not violate the NPS standard. Third, the noise from the oyster boats dissipates within about 400 feet rather than the 2000 feet suggested in the DEIS. No NPS data exist to show that the harbor seals are adversely impacted.

This was all manufactured by NPS. By which employees? At what level? Who gave the instructions? Who guided the process? Who reviewed the revisions?

In light of these revelations concerning the soundscape section of the DEIS, we are continuing to review the NPS DEIS and ATKINS report and reserve the right to come forward with additional concerns in the future if appropriate and warranted.

If you find that NPS and/or VHB employees did indeed commit scientific misconduct, then you are asked to take appropriate actions to right this wrong, clear the air, heal our

community, and re-establish scientific integrity within NPS. You will need to ask that both compromised documents be withdrawn: the ATKINS peer-review report and the NPS DEIS for Drakes Bay Oyster Company. Neither can be trusted.

Please respond to this request for an investigation no later than Friday April 6, 2012. Please provide me with information on whether you plan to investigate, how you plan to proceed, who will be involved, the timeline for this process, if and when your representatives will interview me, and how you plan to communicate your investigation and its outcome to the public. Time is of the essence, since the NEPA process is nearing its conclusion and, as alleged here, the DEIS contains falsified data.

I request a meeting with you to discuss these allegations and the entire situation.

I look forward to hearing from you. Do not hesitate to contact me if you have any questions or want further information.

Sincerely yours,



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Enclosures:

- (1) PDF on NPS DEIS and ATKINS review soundscape deception
- (2) Noise Unlimited 1995 report
- (3) Federal Highway Administration 2006 report
- (4) ENVIRON 2011 report

cc:

Laura Davis, Chief of Staff to the Secretary, DOI
Jon Jarvis, Director, NPS
Dr. Ralph Morgenweck, Science Integrity Officer, DOI
Laura Jacobson, Acting Assistant Secretary for Fish, Wildlife and Parks
Dr. Marcia McNutt, Science Advisor to the Secretary, DOI
Dr. Gary Machlis, Science Advisor to the Director, NPS
Christine Lehnertz, Regional Director, Pacific West Region, NPS
Dr. David Graber, Regional Chief Scientist, Pacific West Region, NPS
Cicely Muldoon, Superintendent, Point Reyes National Seashore, NPS
Mary Kendell, Acting Inspector General, DOI
John Dupuy, Director, Office of Investigations, Office of the Inspector General, DOI
Dr. John Holdren, Director, Office of Science and Technology Policy, the White House