

November 9, 2012

From: Dr. Corey S. Goodman

To: Todd J. Zinser, Inspector General, Department of Commerce

Re: Response to MMC General Counsel's public statement concerning the misconduct complaint filed with the Department of Commerce Office of the Inspector General

Dear Inspector General Zinser,

On November 7, 2012, I requested that the Department of Commerce Office of the Inspector General (DOC OIG), initiate an investigation into allegations of misconduct by Dr. Timothy Ragen, Executive Director, Marine Mammal Commission (MMC). The complaint presented below alleges that Dr. Ragen violated MMC policies, rules, and guidelines, the Federal Freedom of Information Act (FOIA), and the MMC Scientific Integrity Policy.

In an article in the November 8, 2012 issue of the The West Marin Citizen (a local weekly newspaper in the West Marin community), entitled "*Misconduct charged in Marine Mammal Commission report*" and written by Lynn Axelrod, Mike Gosliner, General Counsel, MMC, is quoted from an exchange on November 7 as follows:

Mike Gosliner, general counsel for the Commission, said yesterday after 5 p.m. (EST) that he'd had little time to review the complaint, having been in meetings after it was received. He noted that a 1990 Memorandum of Understanding between the Commission and the Commerce Department Office of Inspector General covers criminal activity and not scientific integrity. The Commission, with about 12 staff members, is too small to have its own inspector, he explained.

Gosliner said he "would expect the Inspector General will consult with me and, frankly, I'm not sure this is something we want to engage in. ... I would like to do something such as have an external review because of some of the criticism ... Doing it myself won't satisfy Dr. Goodman."

He said "the whole issue is overly controversial and overly personal. The allegations are probably not true or have a good alternative explanation." But, he said, an "investigation will speak for itself."

Gosliner explained that a complaint regarding scientific integrity policy could lead to a Commission "remedy" but he is "not sure we're at the stage where other remedies might be exhausted" instead. For instance, the complaint might be addressed by the Office of Science and Technology Policy.

In light of Mr. Gosliner's statement to the press on the day my complaint was filed, I would like to make the following clarification concerning my complaint.

Mr. Gosliner quoted from the 1990 Memorandum of Understanding between the MMC and the DOC OIG.

In contrast, I quoted from the March 29, 2011 MMC Scientific Integrity Policy sent by Dr. Ragen to Dr. Holdren, Director, Office of Science and Technology Policy (OSTP), White House, in response to Dr. Holdren's directive to all federal departments and agencies for

such a policy. Dr. Ragen's 2011 letter to Dr. Holdren stated:

The Commission abides by government-wide requirements providing whistleblower protection. As a small agency, the Commission does not have its own Inspector General. However, the Commission has entered into a cooperative agreement with the Inspector General of the Department of Commerce to conduct independent investigations should the need arise or if the objectivity of the Executive Director, the Chair of the Commission, or the General Counsel should be placed in question by a whistleblower's allegations.

It was from that statement that I concluded that the DOC OIG was the correct place to send this complaint. I wrote:

According to that 2011 policy, the DOC OIG agreed to conduct independent investigations of the Executive Director when appropriate given the circumstances. The serious allegations of misconduct and deception set forth in this complaint against the MMC Executive Director mandate that the DOC OIG undertake this investigation.

You might ask: if the Executive Director can not investigate himself, why not hand the investigation over to the Chair of the Commission or the General Counsel? Neither the Chair nor the General Counsel are appropriate for this investigation. The answer is twofold.

First, two of the three Commissioners recused themselves from this matter due to conflicts of interest, including Dr. Daryl Boness, the Chair.

Second, there is a history of involvement by Mr. Gosliner in this matter that should now lead him to be recused as well. Moreover, in his written statement on November 7 to the press, he stated:

He said "the whole issue is overly controversial and overly personal. The allegations are probably not true or have a good alternative explanation." But, he said, an "investigation will speak for itself."

By that statement alone, Mr. Gosliner should not be involved in this investigation. He admitted that he had little time to read the complaint, but nevertheless told the press that the allegations are "*probably not true.*" He also said that the complaint concerned scientific misconduct, when the complaint was filed primarily concerning "misconduct" and "deception." Much of the complaint involves the violation of laws, policies, guidelines, and regulations, and deceptive statements to the public and elected officials, and does not involve science per se (that is largely relegated to the appendix).

In conclusion, I stand by my complaint filed with you on November 7, and remain convinced that neither Executive Director Dr. Ragen, Chair Dr. Boness, or General Counsel Mr. Gosliner should be involved in any way in investigating these allegations.

I request a telephone meeting early next week to speak with you about this matter. I pledge my full cooperation with your investigation.

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