

March 4, 2013

From: Dr. Corey S. Goodman

To: Dr. John Holdren, Science Advisor to the President, and Director, White House Office of Science and Technology Policy

Re: Based on recommendations from Federal agencies and officials, request that OSTP investigate allegations of scientific misconduct involving the:

- National Park Service (NPS),
- U.S. Geological Survey (USGS), and
- Marine Mammal Commission (MMC).

The 2011 MMC and 2012 USGS Reports intentionally, knowingly, or recklessly misrepresented data and analyses, and were further misrepresented in the 2012 NPS Final Environmental Impact Statement for the oyster farm permit at Drakes Estero

Dear Dr. Holdren,

I write to ask the White House Office of Science and Technology Policy (OSTP) to establish and oversee a high-level investigation of scientific misconduct involving three federal agencies (NPS, USGS, and MMC), all linked to misconduct by NPS.

Over the past seven years, the NPS, under the direction of Jon Jarvis as Regional Director and as Director, has engaged in serial scientific misconduct concerning the oyster farm at Drakes Estero, Point Reyes National Seashore. This issue, first brought to your attention in spring 2009, has lingered too long. It is no longer a local issue in West Marin, California. It involves three federal agencies, two Inspector Generals, and three Scientific Integrity Officers.

The misrepresentation of NPS data influenced a Cabinet member's decisions, and recently was quoted in a Department of Justice filing in the U.S. Court of Appeals for the Ninth Circuit. Moreover, the false science claiming environmental harm threatens the shellfish industry nationally and internationally, in contrast to a large body of good science showing that shellfish aquaculture is environmentally beneficial.

This misconduct threatens to undermine one of the hallmarks of your tenure as Director of OSTP: the establishment and implementation of the President's 2009 Policy on Scientific Integrity. It requires your immediate attention.

Why OSTP? There are two separate answers to this question. First, in response to a scientific misconduct complaint concerning the MMC Executive Director, the MMC General Counsel recommended that the complaint should be submitted to OSTP. The Department of Commerce OIG later made the same recommendation after they claimed that their office lacked jurisdiction to investigate MMC misconduct.

Second, as described below, no other federal agency is empowered, capable, or willing to address scientific misconduct at NPS. In his speech to the National Academy of Sciences on April 27, 2009, President Obama stated "... *the days of science taking a back seat to ideology are over.*" But that is exactly what has happened. Science has taken a back seat to a pre-determined agenda. You created a Policy, and both Interior and MMC endorsed it, but that Policy has been violated – and has no proper oversight – at both Interior and MMC. Serious allegations of scientific misconduct need to be properly adjudicated.

1. Brief Overview of Allegations of Scientific Misconduct

In November 2012, a new generation of misconduct emerged when NPS released the Final Environmental Impact Statement (FEIS) for the oyster farm permit at Drakes Estero (see Appendix 1). As you know, this is not the first episode of scientific misconduct concerning NPS, but it now involves two other federal agencies in addition to NPS.

The NPS FEIS found that the oyster farm had a “*moderate adverse impact*” on the harbor seals at Drakes Estero. This single determination had a significant impact on other findings in the FEIS, and on elected officials, the public, and media. After six years of false public claims, manipulated reports, and secret cameras – and millions of taxpayer dollars – two pieces of alleged evidence supported this finding by NPS.

The facts, based upon the “*preponderance of evidence*” reveal that both claims of scientific evidence were based upon misrepresentations made “*intentionally, knowingly, or recklessly,*” the standard for determining misconduct according to the Federal Policy on Research Misconduct.

First, the FEIS claimed evidence that the oyster farm occasionally disturbed harbor seals. This finding was inconsistent with the physical landscape: the oyster boats typically stay over 700 yards away from the harbor seals, and with an intervening sandbar blocking their view and buffering their sound (a fact not disclosed in the FEIS).

Second, the FEIS claimed that these disturbances were, in fact, ‘chronic’ (with no evidence) and led to a spatial displacement of harbor seals out of Drakes Estero. This claim was equally inconsistent with the lack of any evidence for the claim of ‘chronic’ disturbance, and the fact that NOAA, the agency charged with overseeing the Marine Mammal Protection Act of 1972, claims the harbor seal population in and around Drakes Estero is at or near its carrying capacity.

Moreover, during the DEIS comment process, NOAA, the federal agency responsible for administration of the Marine Mammal Protection Act, reported to NPS, in their comments on the DEIS, that their agency had not received any reports of harbor seal disturbances by the oyster farm in Drakes Estero.

What data support the NPS finding of oyster farm disturbances of harbor seals?

The NPS cited a 2012 USGS Report that analyzed, at NPS request, over 300,000 time- and date-stamped NPS photographs of the oyster boats and harbor seals (from secret cameras operational for three and one-half years from 2007 to 2010). The FEIS quoted the USGS Report as concluding that on two occasions in 2008, oyster boats caused seals to flush into the water.

There are, however, two major problems with this claim: NPS misquoted the USGS Report, and USGS misquoted the original expert’s findings (Dr. Brent Stewart of Hubbs SeaWorld Research Institute). In so doing, both agencies misrepresented the primary scientific analysis.

The USGS Report did not conclude what the NPS claimed. Rather, it found an “*association*” (a weak correlation) and not causation of oyster boats and harbor seals getting flushed into the water (a major disturbance) on these two occasions. The USGS had no harbor seal behavior expert, and so relied on an analysis of NPS photos, as contracted by NPS, conducted by Dr. Brent Stewart, a harbor seal behavior expert at Hubbs SeaWorld Research Institute in San Diego (the 2012 Stewart Report). The USGS Report quoted the Stewart Report as finding two “*associations*” of oyster boats and

harbor seals getting flushed into the water.

The Stewart Report did not conclude what the USGS claimed. Rather, Dr. Stewart found “*no evidence of disturbance*” of harbor seals by oyster boats. He was very clear. A review of his spreadsheet, submitted to both NPS and USGS, confirms his clarity. The USGS Report misrepresented the Stewart Report, claiming a correlation where Dr. Stewart found none, and then the NPS FEIS misrepresented the USGS Report, claiming causation where the USGS claimed a weak correlation.

In this way, a finding of “*no evidence of disturbance*” was transformed into a finding of cause-and-effect that led to a finding in the FEIS of “*moderate adverse impact.*”

Was this a clerical error in copying Dr. Stewart’s spreadsheet from one report to another? Unlikely. Consider: (i) the evidence for *serial misrepresentations* of disturbances in the three reports, (ii) the *history* of repeated NPS false claims of disturbances since 2007, and (iii) that this is the *only* evidence for disturbances over the past six years.

It is alleged here that the “*preponderance of evidence*” (the criteria defined by the White House and DOI Scientific Integrity Policies) leads to the conclusion that these serial misrepresentations were committed “*intentionally, knowingly, or recklessly.*”

There were two steps in the FEIS finding of a “*moderate adverse impact*” of oyster boats on harbor seals. First, NPS misrepresented the USGS and Hubbs SeaWorld Reports to incorrectly claim evidence that the oyster farm disturbed seals. Second, based upon this false evidence, NPS argued that these disturbances were chronic and led to displacement of the harbor seals out of Drakes Estero. This claim is based on two misrepresentations.

The NPS based this claim on a paper published by NPS scientists using statistical analysis to claim evidence that the oyster farm caused a spatial displacement of harbor seals. However, at best, NPS scientists presented evidence for a weak correlation (the MMC position), not causation (the NPS position).

A finding of impact in an EIS requires evidence for causation, not correlation. But even a finding of weak correlation was disputed by analysis of the NPS data.

The NPS argued that their weak correlation, although scientifically challenged based upon an independent analysis of NPS data (see appendix 1), was independently verified by further analysis by the Marine Mammal Commission (the 2011 MMC Report) which found that the NPS data, although “*scant*” and “*stretched to the limit,*” appeared to provide “*some support*” for the NPS correlation. The MMC finding of a weak correlation was disputed, and later reversed by the MMC.

NPS knowingly misrepresented the truth; the MMC Report was not independent. As both the MMC and NPS are aware, the MMC violated its own Scientific Integrity Policy, had biased interactions with NPS, and essentially allowed the NPS to review the NPS, while claiming the MMC Report was independent (see appendix 1 for details).

When further challenged scientifically, seven months after release of the MMC Report, and five months prior to release of the FEIS, the MMC Executive Director reversed his conclusion in a private June 2012 letter. The MMC never publicly acknowledged that reversal, and the NPS, fully aware of this, failed to acknowledge this in their FEIS, but rather concluded that the NPS paper was independently validated by the MMC.

Here too, it is alleged that the “*preponderance of evidence*” will lead you to conclude that these serial misrepresentations were committed “*intentionally, knowingly, or recklessly.*”

The six allegations of misconduct (Appendix 1), involving three agencies, are:

1. **USGS**, in their Report, misrepresented and falsified the record from the Stewart Report (by Hubbs SeaWorld harbor seal behavior expert Dr. Stewart), falsely claimed a *correlation* of oyster farm activity and disturbance of harbor seals, and in so doing violated the DOI and White House Scientific Integrity Policies.
2. **NPS**, in the Final EIS (FEIS), misrepresented the USGS Report, falsely claimed *causation* of oyster farm activity and disturbance of seals, and in so doing violated the DOI and White House Scientific Integrity Policies.
3. **Marine Mammal Commission**, while claiming to be independent of NPS in their review, release, and later private reversal (without public acknowledgment or retraction) of a key conclusion on the impact of the oyster farm on harbor seals in the MMC Report, violated the MMC and White House Scientific Integrity Policies.
4. **NPS**, in the FEIS, cited the NPS Becker et al. 2011 paper as providing statistical support for the NPS correlation on the impact of the oyster farm on harbor seals, when NPS knew the correlation was not valid, in so doing violated the DOI and White House Scientific Integrity Policies.
5. **NPS**, in the FEIS, cited the MMC Report as an independent validation of the Becker 2011 paper NPS correlation on the impact of the oyster farm on the seals, when NPS knew MMC was not independent and had reversed its support of the NPS correlation, violated the DOI and White House Scientific Integrity Policies.
6. **NPS**, in a six-year pattern of repeated misrepresentations and falsifications concerning the impact of the oyster farm on the harbor seals, demonstrated that it has "*intentionally, recklessly, or knowingly*" misrepresented data and in so doing violated the DOI and White House Scientific Integrity Policies.

2. Only OSTP Can Resolve These Allegations of Scientific Misconduct

Only OSTP can resolve these allegations of scientific misconduct involving NPS, USGS, and MMC (see Appendix 2).

Using the procedure outlined in the MMC Scientific Integrity Policy filed with OSTP, allegations of misconduct were submitted on November 7, 2012 to the Department of Commerce (DOC) OIG, but the OIG returned the complaint a month later, asserting (in contrast to the MMC Policy) they had no jurisdiction over MMC. DOC OIG and MMC suggested OSTP is the best – and only – federal office to adjudicate these allegations.

After NPS released the FEIS, and the USGS and Stewart Reports were released, a new generation of scientific misconduct emerged involving three federal agencies (NPS, USGS, MMC). However, although all three agencies have Scientific Integrity Policies, in reality there is no agency capable and willing to investigate these allegations.

- 1) Inspector General offices in general are unable or unwilling to properly investigate allegations of scientific misconduct.
- 2) If allegations involve high-level officials, the Scientific Integrity Officers in general are conflicted and lack the independence or willingness to investigate such allegations.
- 3) MMC has no Inspector General, no Scientific Integrity Officer, and no mechanism to investigate misconduct charges against its Executive Director.
- 4) Since the Department of Commerce (DOC) OIG has returned the misconduct complaint and stated they have no jurisdiction over MMC (and suggested the complaint be submitted to OSTP), the MMC apparently has not followed up.
- 5) The Department of the Interior (DOI) OIG oversees NPS and USGS, but the DOI OIG abdicated its independent investigatory oversight, and went further to engage in a cover-up of NPS misconduct.
- 6) The Scientific Integrity Officers in both NPS and DOI are conflicted by their reporting lines and their prior involvement in these issues.
- 7) The Scientific Integrity Officer in USGS is conflicted and has been unresponsive.

Thus, OSTP is the only agency capable of an independent investigation (Appendix 2).

3. Brief Overview of the History of NPS Scientific Misconduct

The White House Scientific Integrity Policy was articulated by:

- President Obama's Memorandum on Scientific Integrity of March 9, 2009,
- President Obama's speech to the National Academy of Sciences (NAS) on April 27, 2009, and
- Your Memorandum, as Director, OSTP, of December 17, 2010.

The White House Scientific Integrity Policy, articulated by the President and you, has been abandoned by the conduct of three federal agencies, two inspector generals, and three scientific integrity officers. The NPS scientific misconduct, now involving other departments and agencies, is single-handedly undermining the President's Scientific Integrity Policy. If unchecked, that Policy will become meaningless.

I request that OSTP conduct an investigation (i) to address allegations of scientific misconduct at NPS, USGS, and MMC, and (ii) to protect the integrity of its Policy governing science throughout the federal government.

The White House Scientific Integrity Policy was violated repeatedly by NPS over the past six years (Appendix 3). Those violations were inexplicably defended by the Department of the Interior, unheeded by the DOI Office of the Inspector General (OIG), and actively propagated to two other federal agencies, one within Interior – the U.S.G.S. – and the other outside Interior – the Marine Mammal Commission (MMC) – all to fulfill a predetermined agenda emanating from the top NPS leadership.

Both NPS and DOI continue to assert that multiple investigations reviewed NPS science, none found scientific misconduct, and therefore, claims of misconduct were addressed and found to be without merit. As documented here (Appendix 3), that oft-repeated assertion is misleading and more accurately, a distortion of the record (see Table below).

date	agency	Scientific Misconduct?	Findings	Comments
July 2007	NPS	No response	NA	NPS Reg. Dir. Jarvis never responded to allegations
Dec 2007	NPS	No response	NA	NPS Director Bomar never responded to allegations
July 2008	DOI OIG	No NPS or DOI policy	NPS knowingly misrepresented USGS data and misinformed public	Finding fits definition of scientific misconduct today
May 2009	NAS	Did not consider	NPS selectively presented and misrepresented NPS data	Leaked emails show chair thought it was intentional
May 2009	DOI Sec	No response	NA	Jarvis answered (poorly) only 7 of 21 allegations
July 2009	DOI OIG	Found none; ignored 95% of counts	Cleared Jarvis of "allegation" but considered only 1 of 21 allegations; did not consider allegations Jarvis did not answer	Misled Senate Committee to believe Jarvis cleared when ignored most allegations
Nov 2010	DOI OIG	No response	DOI OIG directed NPS to investigate, leading to Solicitor's office Frost Report; OIG to further investigate if warranted	OIG not satisfied with Frost Report; failed to follow-up; failed to respond to inquiries
March 2011	DOI Frost Report	Found no scientific misconduct	Found administrative misconduct; bias, advocacy, troubling mind-set, NPS broke Code of Scientific & Scholarly Conduct	New definition of scientific misconduct; OIG allowed DOI to investigate DOI
Nov 2011	MMC	Did not consider	Accepted NPS data analysis, but 7 months later privately reversed key conclusion	MMC not independent; allowed NPS to review NPS
Nov 2012	DOC OIG	No response, returned	DOC OIG claimed no jurisdiction over MMC, returned complaint, suggested OSTP	DOC OIG no oversight; MMC misinformed OSTP
Dec 2012	USGS	No response	NA	USGS SIO failed to respond to inquiries
Feb 2013	DOI OIG	Found no scientific misconduct	Altered and ignored some allegations, created straw-man allegations, cherry-picked law and policy, accepted explanations contradicted by documents	DOI OIG went to great lengths to not find NPS misconduct, raising questions of independence

For example, the DOI claims that the DOI OIG cleared NPS then-Regional Director Jon Jarvis of all allegations of scientific misconduct in July 2009. Senator Bingaman opened the Senate Energy Committee nomination hearing and stated: *"The Department of Interior's Office of Inspector General has completed an inquiry into that allegation and has reported that it has found no evidence to support the allegation."* The Senator apparently was not informed that the OIG did not investigate 20 of the 21 allegations set forth in a detailed complaint sent to the Secretary. The DOI OIG misled the Senator and the U.S. Senate when it was actively considering the nomination of Jon Jarvis to serve as NPS Director.

As you are aware, on May 16, 2009, I submitted a 21-point case for misconduct to Secretary Salazar. The Secretary ignored my letter. It was never acknowledged. In July 2009, I submitted a parallel complaint to the DOI OIG. The OIG investigated only one of the 21-points of scientific misconduct I filed with Secretary Salazar. Mr. Jarvis was unable to answer most of those 21 points when given the opportunity.

However, Mr. Jarvis did provide an answer to a single issue. It was that single issue (and only that issue of the 21) that the DOI OIG investigated and dismissed. Concerning this issue, on May 30, 2012, Assistant Secretary Jacobson wrote to Senators Vitter and Inhofe *"the Department is committed to scientific integrity ... as well as to transparency with*

Congress." It is difficult to reconcile that statement with what went on in July 2009 when the DOI allowed allegations of scientific misconduct to be misrepresented to Congress.

In a January 9, 2013 filing with Federal Judge Yvonne Gonzales Rogers, the DOI acknowledged that the 2008 DOI OIG Report found that NPS personnel *"could have exercised better judgment."* While true, that statement does not reflect the findings of the DOI OIG in 2008, who found an NPS scientist had knowingly *"misrepresented research"* and was *"privity to information contrary"* to what NPS published, but *"did nothing to correct the information before its release to the public."* This finding fulfilled the current definition of scientific misconduct (to knowingly misrepresent research), but no such policy existed at the time (2007) at NPS or DOI (even though the December 2000 Federal Policy on Research Misconduct mandated that NPS and DOI have a policy by the end of 2001).

The 2009 National Academy of Sciences (NAS) Report found that NPS *"selectively presented, over-interpreted, or misrepresented ..."* its own data. Both the 2008 DOI OIG Report and the 2009 NAS Report stated explicitly that they did not consider scientific misconduct. The 2008 OIG Report said the issue could not be addressed because Interior had no approved Code of Scientific and Scholarly Conduct at the time. The NAS announced in a March 2009 press release that they would not consider the issue of misconduct.

The 2011 report from the DOI Solicitor's Office (the Frost Report), on the other hand, concluded that NPS scientists had shown *"bias," "advocacy," a "troubling mind-set," "mishandled" data, and a "willingness to allow subjective beliefs ... to guide scientific conclusions."* The Frost Report concluded that *"this misconduct arose from incomplete and biased evaluation"* and found that five NPS employees *"violated [the] NPS Code of Scientific and Scholarly Conduct"* (a code put in place after the 2008 DOI OIG report).

The DOI inexplicably (and without precedent in any federal policy) defined a violation of the NPS Code of Scientific Conduct as a finding of *"administrative misconduct"* rather than *"scientific misconduct,"* thus allowing NPS and DOI to later assert that there was no finding of scientific misconduct. The Frost Report provided no federal document for such a definition, nor any precedent for use of the term. Field Solicitor Gavin Frost admitted to me that he invented the concept of *"administrative misconduct."*

Concerning NPS science in the Environmental Impact Statement (EIS) process, a scientific misconduct complaint was filed with the DOI OIG on April 24, 2012, and an Information Quality Act (IQA) complaint was filed with NPS on August 7, 2012, both concerning the intentional misrepresentation of soundscape data in the EIS.

The NPS responded to the IQA complaint on December 21, 2012. NPS Director Jon Jarvis wrote that NPS did not have to answer the IQA complaint and correct the EIS because the IQA complaint *"appears to have been mooted by the Secretary of the Interior's November 29, 2012 memorandum which announced his decision ..."* to not renew the oyster farm lease. In so doing, Jarvis effectively asserted that NPS science is beyond accountability and NPS does not have to correct scientific mistakes (see below).

The DOI OIG responded to the misconduct complaint on February 7, 2013. The IG dismissed all allegations of misconduct concerning the soundscape data. The IG inexplicably accepted the NPS use of a Kawasaki 2-stroke, 750 cc, 70 horsepower (HP) Jet Ski to misrepresent the 4-stroke (quieter), 360 cc (smaller), 20 HP (less powerful), oyster skiff; and a 400 HP cement mixing truck to misrepresent the plastic oyster tumbler with a ¼ HP, 12-volt (much quieter, smaller, less powerful) electric motor.

The IG went to great lengths to dismiss the allegations, altering and ignoring some

allegations, creating straw-man arguments, cherry-picking law and policy, and accepting explanations and testimony despite evidence to the contrary – evidence in the form of documents and emails. In so doing, the DOI OIG confirmed what the House Committee on Natural Resources (Office of Oversight and Investigation, in its 75-page report: “Holding Interior Watchdog Accountable”) recently concluded about the OIG, namely, that it lacks independence and is too accommodating to Interior’s top leadership.

As the President’s science advisor, I ask you to judge the scientific facts and merits of the case and not by DOI or NPS press releases and letters that misrepresent the facts, or misrepresentations by NPS supporters. **At the heart of this case are continuing serial misrepresentations of scientific evidence by NPS and other agencies.**

Most of the allegations against NPS have *never* been adjudicated, those that have were not judged using the White House and DOI definition of scientific misconduct, and none has been considered by a truly independent panel of scientists with appropriate technical expertise (e.g., statistics). None of the allegations presented here concerning the NPS, MMC, and USGS have ever been reviewed. The allegations described here are presented in the context of the six-year history of repeated misrepresentations and falsifications to further support the case for “*intent*.”

The OSTP needs to determine whether the alleged misconduct was committed “*intentionally, knowingly, or recklessly*” and whether the allegations are supported by the “*preponderance of evidence*,” the standard set forth in the December 2000 Federal Policy on Research Misconduct.

The evidence for scientific misconduct is compelling. There is a pattern of repeated misrepresentations and falsifications by NPS over a six-year period. The evidence is convincing that the NPS misrepresentations were committed “*intentionally, knowingly, or recklessly*.” The evidence also suggests that NPS was an active participant in propagating misrepresentations at other agencies. The misrepresentations at MMC and USGS were not independent events, but involved numerous NPS employees.

It is difficult not to see the link between NPS and the misconduct in these other agencies, all to manipulate the finding of environmental adverse impacts in the Final Environmental Impact Statement (FEIS) for the oyster farm at Drakes Estero.

You were informed of these issues four years ago. They have only gotten worse since. I believe you expected that the White House directives and policies in 2009 and 2010 would have led by now to proper adjudication of the allegations of scientific misconduct against NPS. But they have not. The implementation of your policies failed.

The NPS continued to abuse science – and ignore the White House policy – unabated for the four years of your administration. In the material enclosed here, you will see striking examples that reveal that the President’s policies were wholly disregarded. The Department of the Interior Office of the Inspector General, under the leadership of Acting Inspector General Mary Kendall, repeatedly turned its back on this abuse and abdicated its investigatory oversight and responsibility.

The NPS and DOI Scientific Integrity Officers (SIOs) were complicit in these misrepresentations. This abuse of science at NPS spread to involve two other federal agencies – USGS and MMC. MMC has no scientific integrity officer. Although USGS Director Dr. McNutt said an investigation would be initiated by her SIO, the SIO has been unresponsive to my inquiries and failed to interview me or ask a single question.

On September 19, 2012, DOI OIG Deputy Inspector General Mary Kendall circulated the DOI OIG 2012 employee survey to OIG staff. The internal survey showed that 40% of

OIG employees believed IG reports were compromised to please Interior leadership. On October 9, 2012, Jeff Ruch, Executive Director, Public Employees for Environmental Responsibility (PEER), released a statement entitled:

Rising Doubts on Independence of Interior Inspector General

PEER wrote:

“A sizeable and growing segment of the investigators and supervisors within the Interior’s Department’s Office of Inspector General (IG) believes the office is pulling punches to avoid embarrassing the administration, according to new staff survey results posted today by Public Employees for Environmental Responsibility (PEER). These concerns echo criticisms by Congress and PEER that under acting Inspector General Mary Kendall the Interior IG has compromised its “independence and honesty” to please political superiors, in the words of one agent.”

On February 21, 2013, Congress released a report documenting those criticisms cited by PEER. The U.S. House of Representatives Committee on Natural Resources, Office of Oversight and Investigations, released an investigative report entitled “Holding Interior Watchdog Accountable.” The House Committee found that the DOI OIG pulled its punches and accommodated DOI leadership rather than investigate serious charges of misconduct. The details described in the 75-page report are troubling and reveal a lack of independence of the DOI OIG, IG reports getting softened, and findings whitewashed, so as to avoid a finding of misconduct.

As cited in the House report, DOI special agent Richard Larrabee commented in writing that he was “*deeply concerned*” that the Secretary’s Office receives “*great deference*,” suggesting it uses its influence to persuade OIG employees to stand in line with the Department’s politics.

If the DOI OIG cannot function as an independent watchdog, and the Scientific Integrity Officers cannot function in an independent fashion, then who can adjudicate allegations of misconduct, particularly ones involving NPS leadership?

Given this history, the public and Congress have no confidence that that any investigations are independent and transparent, and that the White House Scientific Integrity Policy is being upheld. Only the OSTP, the White House office that initiated this process in 1996 and set forth the final federal policy in 2000, can resolve this issue.

4. The Jarvis Doctrine: NPS Science is Beyond Accountability

The lack of scientific integrity at NPS goes beyond the lack of oversight by the DOI OIG, and the conflicts of the NPS and DOI Scientific Integrity Officers. NPS Director Jarvis recently made the case that NPS science is beyond accountability, and that neither the White House Scientific Integrity Policy nor Data Quality Act pertains to NPS documents, as long as they are not traceable to a policy decision. Adhering to White House Policy is, according to Jarvis, a matter of “discretion,” not necessity.

On August 7, 2012, Cause of Action, a Washington, D.C. nonprofit focused on government accountability, submitted a 71-page Data Quality Act (DQA) complaint to NPS on behalf of Kevin and Nancy Lunny and Dr. Corey Goodman. The DQA complaint focused on the scientific misrepresentations in the DEIS.

On October 3, 2012, NPS rejected the DQA (also known as Information Quality Act or IQA) complaint, not based on its scientific merits, but rather *“as a matter of discretion”* that NPS could and did dismiss in its entirety.

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

Cause of Action appealed the rejection on October 16, 2012, and wrote:

“Consideration of IQA complaints is not a matter of grace left to individual agencies’ untrammelled discretion but rather a responsibility and duty that Congress wisely chose to impose on federal agencies in an effort to ensure that the information disseminated by those agencies meets basic minimum standards ...”

This was not the first time NPS dismissed a call for data quality. Cause of Action wrote:

“The Complaint is the third information-quality complaint that NPS and DOI have received requesting correction of information NPS has disseminated concerning DBOC and Drakes Estero in about five years. NPS has not addressed the merits of any of those complaints – and did not even bother to respond at all to one of them.”

Director Jon Jarvis denied their appeal on December 21, 2012, and wrote:

“We note that your information quality complaint appears to have been mooted by the Secretary of the Interior’s November 29, 2012 memorandum, which announced his decision [to not renew the oyster farm lease] was “based on matters of law and policy,” that the documents challenged in your complaint “are not material to the ... central basis” for the decision ... Accordingly, the information challenged in your complaint has not been used and will not be used in a decision-making process ...” and thus cannot be challenged.

Although the Secretary said the EIS was *“not material to the ... central basis”* for his decision, the Secretary also wrote that the DEIS and FEIS *“have informed me... and have been helpful to me in making my decision.”* The Secretary was informed by misrepresented data provided to him by Director Jarvis and NPS who initiated the National Environmental Policy Act (NEPA) process, reportedly spent \$2 million dollars, and produced a Final EIS of over 1,000 pages. Moreover, NEPA requires agencies to take a *“hard look”* at data and not publish an EIS that acts *“...as a subterfuge designed to rationalize a decision already made.”*

Director Jarvis stated in his letter that regardless of whether a document intentionally misrepresented scientific data, that so long as it did not play a central role in a policy decision, that the document was untouchable (the Jarvis Doctrine – see quote above).

Under President Obama, and notwithstanding the policies the President and you established, Director Jarvis argued, science that is wrong --- and in certain instances knowingly wrong -- can be released and broadly disseminated with impunity.

Moreover, Jarvis declared that NPS science is not subject to scientific scrutiny. He declared, in effect, that NPS science is above the law and beyond accountability.

As long as NPS denies that the scientific misconduct was central to a policy decision, NPS maintains they can evade the legal obligations of the DQA. The Jarvis Doctrine is the Director’s justification for a lack of scientific integrity under his leadership at NPS.

Director Jarvis asserted, using his (unacceptable) criteria of plausible deniability, that the NPS FEIS “will not be used in a decision-making process.” How can he know this?

Once a federal scientific document is released into the public domain, unless corrected or retracted, it can and will be used for years to come in decision-making processes throughout the nation, and around the world.

This is not hypothetical. It is already occurring. The false science emanating from the NPS NEPA process and resulting DEIS and FEIS is already being cited and causing unnecessary harm to shellfish producers in several States in the U.S. and in Australia and New Zealand.

On January 7, 2013, Dr. Robert Rheault, Executive Director, East Coast Shellfish Growers Association, wrote to Kevin Lunny (owner, Drakes Bay Oyster Company) about the NPS DEIS and FEIS for the oyster farm in Drakes Estero, and stated:

“The NPS documents have already done great harm, and we can be certain that if they are not retracted or corrected they will continue to be used against the shellfish aquaculture industry at public hearings for years to come, both in this country and around the world. I personally know of two cases where the issues raised in the DEIS have already been used to quash oyster lease applications: one in Alabama and one in South Carolina.

I was discussing your case with growers from Australia and New Zealand and they were quite concerned that the false claims of marine mammal impacts would be used to thwart leases in their countries as well. When government scientists make these assertions of impact, these claims seem to carry more weight than when they are made by an NGO or university researcher.”

Another striking example is the use of the NPS FEIS, and the latest DOI OIG report, by Department of Justice (DOJ) lawyers, on behalf of DOI, in the U.S. Court of Appeals for the Ninth Circuit case of Drakes Bay Oyster Company, et al., v. Kenneth L. Salazar, et al. On February 19, 2013, in the DOJ’s opposition to DBOC’s emergency motion for injunction pending appeal, Ignacia S. Moreno, Assistant Attorney General, and others from the DOJ, used the tainted FEIS and IG report in their closing written arguments.

The appearance of the FEIS in another federal decision makes NPS Director Jarvis’ argument moot. The prejudicial introduction of the FEIS into the closing argument of the DOJ in response to the DBOC emergency motion for injunction means that NPS has no basis for not reviewing the accuracy and integrity of the FEIS.

In arguing to the U.S. Court of Appeals 9th Circuit that “the public interest is strongly against an injunction,” the DOJ lawyers presented the NPS FEIS as evidence of the “environmental effects of DBOC’s operations...” on Drakes Estero. Not only does the DOJ quote from the major and moderate impacts in the FEIS, but they argue they are valid in spite of DBOC contesting the scientific validity of the FEIS, because of the IG report.

On page 20 of their filing with the Federal Court, the DOJ wrote:

“The FEIS also discussed at length the environmental effects of DBOC’s operations, finding that DBOC’s operations have “long-term moderate adverse impacts” on eelgrass, see Table ES-4 (Ex. 1) at liii; on native shellfish species, id. at lvi; on harbor seals, id. at lix-lx; and on birds, id. at lxi-lxii; and have “major adverse impacts” on the natural soundscape, id. at lxviii, and on wilderness values, id. at lxx.¹¹”

In footnote 11 on the bottom of page 20, the DOJ wrote:

“¹¹ Although DBOC contests the scientific validity of the EIS, that information is in the administrative record and is relevant to the equities here. Moreover, the Inspector General of the Department of the Interior recently issued a report finding “no evidence, documents, [draft EIS] revisions, or witnesses” that supported any allegations of scientific misconduct. See Ex. 12 (Synopsis).”

This becomes a key issue in their final three-sentence conclusion in which they wrote that allowing DBOC to continue its operations would conflict with the public interest in enjoying the “*environmental quality of Drakes Estero.*”

The February 19, 2013 DOJ arguments with the U.S. Court of Appeals 9th Circuit shows that the environmental claims in the FEIS are important, that they are being cited by the federal government, and therefore the Jarvis Doctrine is incorrect in denying the DQA. Moreover, it shows the danger of the IG report dismissing all allegations of misconduct.

In summary, although NPS Director Jarvis asserted that the NPS EIS did not play a major role in the Secretary’s decision, and thus was above the law and beyond accountability, Dr. Rheault stated that the NPS EIS is already being quoted in regulatory cases in Alabama and South Carolina, and is of great concern to growers half-way around the world in Australia and New Zealand.

Moreover, the DOJ lawyers, representing the DOI, in the Federal Court of Appeals (9th Circuit) quoted both the FEIS and the IG report in their closing arguments as evidence for environmental impacts by DBOC.

Director Jarvis, by his actions, effectively re-defined the applicability for the DQA, NEPA, and White House Scientific Integrity Policy. He nullified the Federal Policy on Research Misconduct. The Jarvis Doctrine asserts that NPS science is above the law and beyond accountability from any and all of these laws and policies.

If you accept the Jarvis Doctrine, and allow NPS scientific misconduct to stand and NPS science to be beyond accountability, then the White House Scientific Integrity Policy will have been functionally overturned. If allowed to stand, Jarvis will have single-handedly overturned the President’s Policy, or at best, made it discretionary.

5. Request That OSTP Establish a Panel to Investigate These Allegations

This issue has outgrown Drakes Estero. It is no longer a local issue. As outlined above, it involves three federal agencies, two Inspector Generals, and three Scientific Integrity Officers. The NPS false science has been used by Department of Justice lawyers in their filings with the U.S. Court of Appeals (9th Circuit). It has been used in regulatory hearings involving oyster farms in other parts of the U.S., and growers in other countries are becoming increasingly concerned. Many people inside and outside government are watching and waiting.

Allowing the scientific misconduct to stand is already having – and will continue to have – a corrosive impact on scientists throughout government. It sends a message not to report the facts and data objectively as you find them, but rather to report data as someone else in a powerful position wants them to be reported. It is not healthy for science, and it is damaging to what you have been trying to accomplish at OSTP.

For the reasons described here, none of these agencies – and no Inspector General – are capable of investigating this case of scientific misconduct in a way the public and Congress can trust. That leaves only one choice – OSTP – the same place the DOC OIG and MMC General Counsel recommended I take the allegations against MMC.

In his speech to the National Academy of Sciences on April 27, 2009, President Obama said: "... the days of science taking a back seat to ideology are over." That goal is crucial for our country. At this juncture, the only way to make sure that science does not take a back seat to ideology is for you, the President's science advisor, to direct a truly independent investigation of the science in this matter at NPS, USGS, and MMC.

In the January 23, 2013 Huffington Post, Dr. Peter Gleick, President, Pacific Institute (environmental NGO), elected member, NAS, and MacArthur Fellow, wrote:

"... the National Park Service, the Department of the Interior (DoI), and some local environmental supporters (with whom I often have strong common cause) manipulated, misreported and misrepresented science in their desire to support expanded wilderness. In an effort to produce a rationale to close the farm, false arguments were made that the farm damaged or disturbed local seagrasses, water quality, marine mammals and ecosystem diversity. These arguments have, one after another, been shown to be based on bad science and contradicted by evidence hidden or suppressed or ignored by federal agencies. The efforts of local scientists, especially Dr. Corey Goodman, professor emeritus from both Stanford and Berkeley and a member of the U.S. National Academy of Sciences, were central to revealing the extent of scientific misconduct. Reviews by independent scientists and now confirmed by investigations at the Department of Interior and the U.S. National Academy of Sciences show that arguments of environmental harm from the oyster farm were misleading and wrong."

"... scientific integrity, logic, reason, and the scientific method are core to the strength of our nation. We may disagree among ourselves about matters of opinion and policy, but we (and our elected representatives) must not misuse, hide or misrepresent science and fact in service of our preferences and ideology."

Dr. Gleick is right – the scientific method is core to the strength of our nation. It is also core to the White House Scientific Integrity Policy. The Jarvis Doctrine overturns and undermines what you stand for as a scientist and a leader – your hallmark policy during your tenure as Director, OSTP. It is time for OSTP to restore science to its rightful place.

In summary, this issue requires your immediate attention and action. I request that:

- (1) We meet so I can present the allegations and propose a proper investigation.
- (2) OSTP establish a blue ribbon panel of eminent scientists, such as the President's Council of Advisors on Science and Technology, to conduct this investigation.
- (3) The panel should investigate these allegations in a transparent fashion, allowing both sides to respond to statements made by the other in an open fashion.

I look forward to discussing these issues with you as soon as possible.

Sincerely yours,



Corey S. Goodman, Ph.D.

corey.goodman@me.com

415 663-9495; 650 922-1431 (mobile)

Appendices

Appendix 1: Overview of Allegations of Scientific Misconduct

Documents for allegations #1 and #2:

Stewart Report, May 2012

USGS Report, November 2012

NPS Final Environmental Impact Statement, November 2012

Documents for allegations #3-5:

CSG to Zinser.11_07_12.cover letter.pdf

CSG to Zinser.11_07_12.complaint.pdf

CSG to Muldoon.11_07_12.cover letter.pdf

CSG to Zinser.11_09_12.response to MMC.pdf

2012-12-19 (Signed Letter to Corey Goodman).pdf

2012-12-19 (Signed Letter to MMC).pdf

Documents for allegation #6:

Summary of history of NPS harbor seal claims.csg.pdf

History of NPS harbor seals claims.csg.pdf

Appendix 2: Only OSTP Can Resolve These Allegations of Scientific Misconduct

Appendix 3: Overview of the History of NPS Scientific Misconduct

Appendix 4: Analysis of DOI OIG Investigative Report on DBOC EIS: The DOI OIG Did Not Conduct a Proper and Independent Investigation of NPS Misconduct

Appendix 5: Dr. Corey Goodman, Brief Resume and History of Involvement

cc:

Interior Secretary Ken Salazar

NPS Director Jon Jarvis

NPS Scientific Integrity Officer Gary Machlis

USGS Director Dr. Marcia McNutt

USGS Acting Director Dr. Suzette Kimball

USGS Scientific Integrity Officer Dr. Linda Gundersen

MMC Executive Director Dr. Tim Ragen

DOI OIG Acting Inspector General Mary Kendall

DOC OIG Inspector General Todd Zinser

U.S. Senator Dianne Feinstein

U.S. Senator Barbara Boxer

U.S. Representative Jared Huffman

State Senator Mark Leno

State Assemblyman Marc Levine

Marin County Board of Supervisor Steve Kinsey

DBOC Owners Kevin and Nancy Lunny

Appendix 5:

Dr. Corey Goodman: Brief Resume and History of Involvement

On April 5, 2007, NPS Point Reyes National Seashore Superintendent Don Neubacher met with Marin County Supervisor Steve Kinsey. Kinsey reported that Neubacher made “*strong environmental accusations*” against Drakes Bay Oyster Company (DBOC) and its owner Kevin Lunny including claims of overwhelming data of harm to harbor seals, and claims that DBOC “*committed environmental felonies.*”

On April 28, 2007, Supervisor Kinsey, seeking to validate the NPS claims, contacted me, based upon my scientific credentials, and as a local resident of the West Marin community. He knew me as an elected member of the National Academy of Sciences, biology professor at U.C. Berkeley, and someone who had historically participated in science-based public policy issues. For example, I chaired the National Academy of Sciences’ Board on Life Sciences from 2001 to 2006, and have served for some years on the California Council on Science and Technology.

Supervisor Kinsey questioned the veracity of the NPS scientific claims. He asked me to review the NPS claims vs. NPS data, and to testify as an independent scientist at the County hearing on May 8, 2007 as to whether the NPS data supported the NPS claims.

When I testified at that May 8, 2007 hearing, I did not know Kevin Lunny, owner of DBOC. I came to the hearing at the invitation of Supervisor Kinsey, and I testified on behalf of truth and scientific integrity. Today those principles continue to guide my involvement just as they did on May 8, 2007.

At that hearing, I testified that NPS officials and scientists misrepresented their own data. My analysis showed that NPS data did not support NPS claims. I testified:

“... 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 -- even worse -- a blatant misuse of science.”

I cautioned:

“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.”

Those words of caution from May 8, 2007 are as true today as they were then. For raising the issues of scientific integrity at NPS, the attacks on my character and integrity have been relentless by NPS and their supporters, and have only increased recently.

The analysis I presented on May 8, 2007 to the Marin County Supervisors was validated two years later on May 5, 2009 when the National Academy of Sciences concluded:

“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 found NPS misrepresented NPS data in every category of environmental harm including harbor seals. NAS concluded:

“... there is a lack of strong scientific evidence that shellfish farming has major adverse ecological effects on Drakes Estero”

Below is a brief resume (full resume with publications available upon request).

Corey S. Goodman – Brief Resume

Corey Goodman is a scientist, educator, and biotechnology entrepreneur. With a B.S. from Stanford University and Ph.D. from U.C. Berkeley, he spent 25 years as professor of neurobiology at Stanford and Evan Rauch Chair of Neurobiology at Berkeley (Dept. of Molecular and Cell Biology), where he was Howard Hughes Medical Institute Investigator, Head of the Division of Neurobiology, and co-founder and director of the Wills Neuroscience Institute. He published over 200 peer-reviewed scientific papers. Today Dr. Goodman is an adjunct professor at U.C. San Francisco.

Dr. Goodman is an elected member of the National Academy of Sciences (1995), American Academy of Arts and Sciences (1993), and American Philosophical Society (1999), and the recipient of many honors including the Alan T. Waterman Award (1983), Canada Gairdner Biomedical Award (1997), March-of-Dimes Prize in Developmental Biology (2001), Reeve-Irvine Research Medal (2006), and Dawson Prize in Genetics, Trinity College Dublin (2011).

Dr. Goodman moved into biotechnology to apply biomedical discoveries to human health. He co-founded Exelixis (IPO 2000), Renovis (IPO 2004), Second Genome, Ossianix, Labrys Biologics, and Solstice Biologics. He led Renovis as President and CEO (2001) from a private to public company (2004) until its acquisition by Evotec (2007).

In 2007, he was recruited as President and founder of Pfizer’s Biotherapeutics and Bioinnovation Center and a member of Pfizer’s executive leadership team, based on an entrepreneurial R&D model of small units at major academic and biotech hubs fostering innovative technology, drug discovery, and drug development.

Today Dr. Goodman is Managing Partner and co-founder of venBio, a strategic capital firm investing in innovative therapeutics for major unmet medical needs, based on a new model of strategic investment in partnership with Amgen, Baxter, and PPD.

Dr. Goodman is Chair of the Board of Second Genome, Oligasis, Ossianix, Labrys Biologics, and Solstice Biologics. He is a member of the Board of Mirna. He advises others including Compugen and NuMedii.

Amongst 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, and is former Chair of the National Research Council’s (NAS) Board on Life Sciences and past President of the McKnight Endowment Fund for Neuroscience. He is an advisor to numerous biomedical foundations, and a member of the editorial board of Science Translational Medicine and Neuron.

Dr. Goodman was born in Chicago on June 29, 1951. He was married to Marcia Barinaga on December 8, 1984. He and Marcia have lived in West Marin, California since 1993. Marcia oversees Barinaga Ranch, their farmstead sheep dairy, and produces artisanal sheep cheese in her family’s Basque tradition.