

Appendix 2:

Only OSTP Can Resolve These Allegations of Scientific Misconduct

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1. The MMC lacks an OIG (the DOC OIG claims no jurisdiction over MMC).

The Marine Mammal Commission (MMC) lacks any scientific integrity oversight, in spite of the directives in your Memorandum of December 17, 2010, and MMC responses to your Memorandum in 2011 and 2012. Although the MMC wrote to you on March 29, 2011 and February 14, 2012 that the Department of Commerce (DOC) Office of the Inspector General (OIG) provided oversight for them, the DOC OIG claims it does not.

While the MMC filed a Scientific Integrity Policy with OSTP, that Policy lacks oversight and provides no mechanism to investigate charges of misconduct concerning its Executive Director.

Dr. Tim Ragen, Executive Director, MMC, wrote to you on March 29, 2011:

“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.”

In this case, the MMC Executive Director, Chair, and General Counsel are all conflicted.

I filed a misconduct complaint with the DOC OIG concerning MMC Executive Director Dr. Tim Ragen on November 7, 2012 (issue #1 in this complaint; see Appendix 1). That complaint focused on Dr. Ragen’s conduct concerning the review, release, and subsequent reversal of the key conclusion in the November 22, 2011 MMC Report on the oyster farm and harbor seals in Draks Estero.

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

He said “the whole issue is overly controversial and overly personal. The allegations are probably not true or have a good alternative explanation.”

By this statement alone, Mr. Gosliner should not be involved in the investigation. Dr. Daryl Boness, Chair, MMC, has previously recused himself from this matter due to a conflict of interest. Thus, these allegations need to be investigated by an independent entity.

There are some differences between how the MMC represented the 1990 Memorandum of Understanding between the MMC and DOC OIG in its 2011 and 2012 Scientific Integrity Policy, and the 1990 Memorandum itself. While agreeing that the DOI OIG would investigate “*criminal matters*” involving MMC, and that the MMC would pay for such investigations, the 1990 Memorandum did not mention scientific misconduct per se. Moreover, the Memorandum stated that the MMC Executive Director would seek the assistance of the DOC OIG, not that the DOC OIG would handle investigations of the Executive Director.

Nevertheless, the MMC interpreted this Memorandum as covering scientific misconduct. One thing is certain: the agreement was to be in effect until modified by mutual consent or terminated by either party in writing. To my knowledge, neither party has ever terminated the agreement up until the filing of my complaint on November 7, 2012.

The DOC OIG wrote to me on December 19, 2012 stating that The MMC Scientific Integrity Policy (filed with you in 2011 and 2012) contained a “*misrepresentation of our [DOC OIG and MMC] relationship*” and encouraged me to “*seek alternative avenues for resolution.*” Verbally the DOC OIG told me they lacked both jurisdiction and budget to oversee MMC (although the Memorandum stated that they would be reimbursed by MMC), and they suggested OSTP as the only place to take a complaint concerning scientific misconduct at MMC.

In his newspaper interview on November 7, 2012, the MCC General Counsel also recommended OSTP when he stated:

“The complaint might be addressed by the Office of Science and Technology Policy.”

In a follow-up email to the DOI OIG on November 26, 2012, MMC General Counsel Gosliner claimed that he was misquoted in the newspaper interview (although he did not specify in what quote, nor did he contact the newspaper so claiming). Concerning his newspaper interview, he went on to write to the DOC OIG:

“At the time, I had not made the linkage to our scientific integrity policy, because the referenced provision applies only to “whistleblowers,” which I interpreted to be limited to government employees alleging misconduct, not complaints from outside individuals.”

I note that my complaint, sent to Mr. Gosliner prior to his newspaper interview, made explicitly clear in the cover letter that it was submitted to the DOC OIG based upon the MMC Scientific Integrity Policy. Moreover, the 1990 Memorandum said nothing about “*whistleblowers*” and made no distinction as to where allegations originated. Finally, the White House Scientific Integrity Policy, in contrast to Mr. Gosliner’s interpretation, does not distinguish between internal and external whistleblowers: scientific misconduct is scientific misconduct, no matter who first discovers and reports it.

Regardless of the interpretation of the 1990 Memorandum between MMC and the DOC OIG, and the 2011 and 2012 MMC Scientific Integrity Policy filed with OSTP, the DOC OIG has asserted it has no jurisdiction to investigate this misconduct complaint, and thus MMC has no oversight of its Scientific Integrity Policy.

2. The DOI OIG abdicated its oversight.

The Department of the Interior (DOI) OIG handles investigatory oversight of NPS and USGS. I wrote to Secretary Salazar on April 27, 2009 (and again on May 10 and May 16, 2009), and warned him that his presumptive nominee for NPS Director, Jon Jarvis, had “*a pattern of flagrantly ignoring ... the OSTP Federal Policy on Scientific Misconduct. His track record is not consistent with the standard of integrity and transparency set by President Obama...*”

My May 16, 2009 letter to the Secretary, copied to you, described a 21-point case for scientific misconduct against Mr. Jarvis. Mr. Jarvis replied to the Secretary on May 17, responding to only seven of the 21 points, leaving 14 points completely unanswered. As I wrote to you on May 19, 2009, of the limited responses Jarvis provided, some were straw man arguments (i.e., the answers were irrelevant to the charges), a few were misleading, and at least one contradicted formal testimony he gave to the DOI OIG for its July 2008 report.

The allegations of scientific misconduct against Jon Jarvis were never properly

investigated, and Mr. Jarvis began his service as NPS Director in September 2009. The case for scientific misconduct presented here, now stretching across six years and three federal agencies, is the result of Secretary Salazar not heeding those allegations, and both the Interior Solicitor's Office, and the OIG that Congress intended to be Interior's watchdog, allowing the problem at NPS to continue and to spread to other agencies.

a. DOI OIG: example # 1.

At the time of the Jarvis confirmation hearing on July 28, 2009, the DOI OIG wrote a misleading memo to the Secretary of the Interior and the Senate Committee on Energy and Natural Resources suggesting that they had investigated all of the allegations of misconduct, when the record showed they had not. Committee Chair Senator Bingaman (D-NM) opened the 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.*" He apparently did not know that the OIG did not investigate 95% of the allegations and thus misled the Senate.

The DOI OIG investigated only one of the 21-points of scientific misconduct in the May 16, 2009 complaint filed with Secretary Salazar. As described above, Mr. Jarvis did not answer most of those 21 points when given the opportunity. However, Mr. Jarvis did provide an answer to a single issue – his involvement (or asserted lack thereof) with the different versions of the NPS Drakes Estero Report. Mr. Jarvis answered that one charge with plausible deniability. Even though he was placed in charge on all science matters concerning Drakes Estero, he claimed that he did not 'write' the July 2007 version of the discredited NPS Report. It was that single issue (and only that issue of the 21) that the DOI OIG investigated and dismissed.

Why didn't the DOI OIG investigate the other unanswered points? Why did the DOI OIG ignore Jarvis' answer to one point (in his May 17 letter to the Secretary) in which he contradicted his previous interview under oath to the DOI OIG? The OIG failed to inform the Senate that they had not investigated the substantive allegations against Jarvis, and instead informed the Senate Committee that they found no evidence tying Jarvis to the NPS Drakes Estero Report authored by his direct report, Superintendent Don Neubacher.

On August 24, 2009, I discussed the DOI OIG finding with Assistant Inspector General John Dupuy by telephone. He acknowledged quite candidly that regarding my entire complaint, the OIG only investigated one narrow procedural issue, and that the OIG never examined the detailed list of scientific misconduct allegations.

When asked about the bulk of the misconduct claims against Mr. Jarvis, Mr. Dupuy reaffirmed that the OIG doesn't have scientists and doesn't investigate scientific misconduct – i.e., the DOI OIG never looked at the issues of scientific misconduct, the foundation of my complaint.

When asked who, therefore, investigates scientific misconduct in the federal government, Mr. Dupuy answered that it was not NPS, not DOI, not the DOI OIG, not NAS, and not MMC. Mr. Dupuy was unable to identify who would adjudicate allegations of scientific misconduct, especially concerning a high ranking official (in this case, a NPS Regional Director who was about to be confirmed as NPS Director).

Nearly three years later, on May 30, 2012, the DOI Office of the Secretary repeated to two Senators this misrepresentation of the DOI OIG's actions in July 2009 concerning the allegations against Director Jarvis. Rachel Jacobson, Acting Assistant Secretary for Fish

and Wildlife and Parks, in responding on behalf of the Secretary to a February 13, 2012 letter from Senators David Vitter and James Inhofe, wrote on May 30, 2012:

“The Department has taken very seriously the allegation of scientific misconduct and concerns about scientific quality included in the three letters you reference – April 27 and May 10, 2009 letters to Secretary Salazar and the May 16, 2009 letter to Dr. Holdren as well as in several other related submissions to the Department by Dr. Goodman. ... the Senate was fully aware of the allegations made by Dr. Goodman against Director Jarvis during his pendency of his nomination and those allegations were addressed formally in the records of his confirmation hearing.”

Ms. Jacobson failed to answer Senator Vitter’s and Senator Inhofe’s questions in their February 13, 2012 letter as to whether the Senator Committee had all three of my letters from April and May 2009, and whether the Senate Committee was aware that Mr. Jarvis had responded to only 7 of the 21 points in my May 16, 2009 letter. Instead, Ms. Jacobson restated that the DOI OIG had dismissed the allegations, when their precise wording was “*allegation.*” Ms. Jacobson failed to tell the two Senators that of the 21 points outlined in the May 16, 2009 letters to both the Secretary and you, then-Regional Director Jarvis answered only 7 of the 21 (most with irrelevant or misleading answers), and the DOI OIG investigated only one point – one of the few that Jarvis had previously answered.

The Senate was misinformed on July 28, 2009, and Senators Vitter and Inhofe were misinformed on May 30, 2012. The DOI OIG never considered 20 of the 21 allegations against Jon Jarvis, including none of the 14 he did not answer on May 17. Ms. Jacobson wrote to the two Senators that “*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, what the Senate Committee was told, what the two Senators asked in 2012, and what the Assistant Secretary answered.

b. DOI OIG: example # 2.

In a second example, on October 22, 2010, the DOI OIG was informed of allegations that NPS failed to publicly disclose their secret camera program, 300,000 photos, and detailed logs (which, as with the 2007 secret document, also contradicted NPS public statements). On November 9, 2010, the DOI OIG wrote that they asked NPS to investigate the allegations, and that they would subsequently “*evaluate their response to determine whether or not appropriate action was taken or further involvement by our office appears warranted.*” NPS, in consultation with the Secretary’s office, directed the DOI Solicitor’s Office to conduct the investigation. Field Solicitor Gavin Frost, an attorney in the Billings, MT Solicitor’s office, was directed to conduct the investigation.

While the OIG did not investigate the allegations against Mr. Jarvis in 2009, his direct reports were investigated two years later at the direction of the OIG, but not by the OIG. According to Gavin Frost, his report was finalized in late January or early February 2011, and released in a public, redacted version on March 22, 2011.

On March 22, 2011, DOI Field Solicitor Gavin Frost found that five NPS employees, including Superintendent Neubacher and West Regional Chief Scientist Dr. Graber (both of whom reported to Jarvis), and three other Point Reyes scientists (Dr. Allen, Dr. Becker, and Mr. Press, all of whom reported to Neubacher), violated the NPS Code of Scientific

and Scholarly Conduct.

Many aspects of the Frost Report were inadequate. For example, in 2008, the National Academy of Sciences (NAS) requested all NPS harbor seal data concerning the oyster farm and Drakes Estero. On May 5, 2009, the NAS released its report, which stated that the analysis of time- and date-stamped photographs could help resolve the controversy.

On that date, Neubacher and his NPS scientists (reporting to Jarvis) had two years of just such secret photographic data, and yet failed to disclose them to the NAS. Mr. Frost found no misconduct in this failure to disclose these key data, data that contradicted the public claims NPS made to the NAS.

Although the DOI OIG told me on October 7, 2011 (when I met with them in their office in Washington, D.C.) they agreed and found the Frost Report inadequate, two years later, in spite of repeated requests for further involvement (letters from me to John Dupuy, Assistant Inspector General for Investigations, DOI OIG, on September 14, 2011 and March 19, 2012), no additional action has been taken by the OIG, and according to the OIG FOIA officer, the November 2010 file remains open and unresolved as of January 2013.

c. DOI OIG: example # 3.

In a third example, a misconduct complaint was filed with the DOI OIG on April 24, 2012 concerning misrepresentations in the soundscape section of the Draft Environmental Impact Statement (DEIS) for the oyster farm at Drakes Estero. The DEIS, for example, misrepresented noise data as coming from a 4-stroke, 360 cc, 20 horsepower (HP) oyster skiffs on Drakes Estero in 2011, when in fact the data came from a loud, fast Kawasaki Jet Ski (2-stroke, 750 cc, 70 HP) recorded for the New Jersey State Police in 1995. The DEIS also misrepresent noise data from the plastic oyster tumbler with the ¼ HP, 12-volt, electric motor, when in fact the data came from a 400 HP cement mixer truck recorded elsewhere.

The DOI OIG said they would finish and publicly release the results of their investigation and report by early fall 2012, before NPS released the Final EIS (FEIS) and prior to the Secretary's decision.

After the NPS FEIS was released on November 20, 2012, and in response to inquiries as to the outcome of their investigation, the DOI OIG said the report was completed, being held internally, wouldn't be released any time soon, and would not be made public unless requested by FOIA.

On December 21, 2012, Senator David Vitter wrote to DOI Acting Inspector General Mary Kendall. The Senator quoted from his colleague, Senator Dianne Feinstein, who wrote to Secretary Salazar on March 29, 2012 that:

"The Park Service's latest falsification of science at Point Reyes National Seashore is the straw that breaks the camel's back."

Concerning my still-outstanding April 24, 2012 complaint, based upon the same falsification of science cited in Senator Feinstein's letter, Senator Vitter wrote:

"It is frustrating that the Office of the IG seems incapable of acting independently or able to provide clear determinations on violations of the Data Quality Act, as well as other White House and internal agency standards for scientific integrity. In this Drakes Estero situation alone, it is clear that NPS employees in multiple

instances eschewed meeting standards of scientific integrity. Additionally, I have some very significant concerns that your office may have gone out of its way to protect Interior employees for which you were supposed to be independently investigating.”

“This suggests that the DOI OIG has no intention of making this investigation public in a timely fashion, and certainly not in the time promised by the investigators.”

“... can the investigation truly be considered independent?”

On January 16, 2013, Deputy Inspector General Mary Kendall responded to Senator Vitter. Two points from that response are pertinent here.

First, she wrote concerning the length of time required for a proper DOI OIG investigation:

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

She stressed the importance of accuracy in the lengthy review process for an IG report. This is interesting given the serious errors of fact in the final IG report released on February 7, 2013 (see appendices 3 and 4).

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

IG report page 6, ¶ 2:

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

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

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

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

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

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

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

In summary, what is troubling about these errors is that they indicate that the IG did not carefully read the DEIS, and did not carefully fact-check their own IG report. Moreover, it indicates that during the several intervening months in which NPS and DOI had copies of the draft IG report, they also did not properly review the IG report for accuracy, because all of them missed these errors. This contradicts the letter from Deputy Inspector General Kendall to Senator Vitter in which she claimed that the long delay in issuing the IG report was to ensure accuracy, and to make sure the IG report is well written. I encourage you to read the IG report and judge for yourself whether it is clear and well written or not.

Second, concerning scientific misconduct, Deputy Inspector General Kendall wrote:

“For allegations of scientific misconduct, the OIG has an agreement in place to coordinate with the DOI or bureau Scientific Integrity Officer. Because the OIG does not have scientific expertise, the scientific aspect of alleged scientific misconduct is addressed by the Scientific Integrity Officer, not the OIG.”

This statement concerning the collaboration of the Scientific Integrity Officers (SIOs) and the OIG to Senator Vitter stands in marked contrast to what actually occurred in response to my April 24, 2012 complaint filed with the DOI OIG. In my complaint, I alleged (and provided details) that the NPS and DOI SIO's had conflicts of interest. I submitted eleven questions to be asked of Drs. Machlis and Morgenweck to determine whether or not they were conflicted, and whether they should participate in the investigation. In the final IG report on February 7, 2013, the DOI neither provided answers to those questions, nor indicated whether the SIO's participated in the investigation. This is in contrast to Kendall's letter to Vitter suggesting that the SIO's did play a major role. The IG report is silent on this issue of participation and authorship.

OIG Special Agents Vince Haecker and Cordell DeLaPena came to my office and interviewed me for over seven hours on November 16, 2012.

Within less than one week, Mr. Haecker telephoned me and asked if I would be willing to allow the DOI Scientific Integrity Officer (SIO) Dr. Ralph Morgenweck and NPS SIO Dr. Gary Machlis to collaborate with the OIG concerning investigating the allegations of NPS scientific misconduct. I answered “yes” so long as they would show the OIG and me their independence (i.e., that they were behaving as SIO's independent of the NPS Director and DOI Secretary to whom they reported) by their willingness to spend time interviewing me and discussing the scientific data and allegations.

On May 23, 2012, Mr. Haecker wrote to me:

I just wanted to follow up on our very brief conversation to make sure we were on the same page regarding DOI's Science Integrity Officers and to ensure I pass

along the right message. You mentioned you were open to meeting with Dr's. Machlis and/or Morgenweck to discuss the science aspects of your complaint and how their willingness to meet and discuss the issues with, could prove to you their ability to operate independently. Again, all I can do is act as the messenger, but I wanted to ensure that I pass along the right message to Dr's Machlis & Morgenweck and how this potential meeting could better show you their approachability and engagement on the issues you raised with the DEIS.

Less than one hour later, I responded:

"I am very open to meeting with Drs. Machlis and Morgenweck to (i) openly discuss and acknowledge (and hopefully be able to put aside) the conflict issues, and (ii) discuss the science (hopefully this takes up most of our time). Perhaps one of you from the OIG would attend as well (I certainly would not want you to feel excluded). I would be delighted [if] all of us were able to leave the meeting feeling that Drs. Machlis and Morgenweck could indeed operate independently. This could be a tremendous step forward."

Having heard nothing in response from Mr. Haecker or Drs. Morgenweck or Machlis, on June 1, 2012, I wrote again to Mr. Haecker:

I have neither heard from you, nor from Drs. Machlis or Morgenweck, since I made this proposal to you. In fact, I have heard nothing from NPS concerning the scientific misconduct allegations. I also have not heard from NPS about the requested data. This silence from NPS/DOI is an all too familiar pattern. Can we discuss today?

Within a few hours, Mr. Haecker wrote back and suggested we have a phone call that day. In our phone call, he was vague and avoided directly telling me why neither the DOI SIO nor the NPS SIO was willing to meet with me to discuss the scientific data and allegations.

Although Mr. Haecker and I communicated by email and phone many times over the summer 2012, and he continued to ask me for various documents, he never again brought up the issue of either the DOI SIO or the NPS SIO interviewing me. I brought up the issue a month or so later in one of our phone calls, and he deflected the question and blamed the lack of follow-up on him and not them.

Not only are these communications in contrast to what Ms. Kendall wrote to Senator Vitter, but they also show the refusal of the DOI SIO or the NPS SIO to meet with me in an investigation of scientific misconduct that involves this issue so intimately tied to NPS Director Jarvis. I'll return to this issue below of the inability of the various SIO's to investigate these allegations, in spite of Interior Scientific Integrity Policy.

The DOI OIG responded to my misconduct complaint on February 7, 2013. The IG dismissed all allegations of misconduct concerning the soundscape data (see appendix 3). 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 (see below).

In summary, given that the MMC has no OIG, and NPS and USGS have an OIG that appears to have abdicated its timely and responsive investigatory oversight for such matters, the only path forward for upholding the White House Scientific Integrity Policy is to bring this matter to the White House Office of Science and Technology Policy.

d. DOI OIG: internal survey reported they pull their punches.

On September 19, 2012, DOI OIG Deputy Inspector General Mary Kendall circulated the DOI OIG 2012 employee survey to OIG staff. 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

Staff Survey Shows Only 60% Believe IG Operates "Free from Improper Influence"

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."

The 2012 survey was completed by 82% of DOI IG staff. In response to the question of whether the IG "conducts its work in a manner that is independent (free from improper influence) from the Department [of Interior]," nearly one in seven said no, more than a quarter would not say either way, and fewer than 60% said yes. Several staff commented:

"I think there is widespread distrust and low morale in the organization right now. There are at least perceptions the acting IG and COS [Chief of Staff] did not do the right thing, ie [sic], improperly quashed investigations, and have not been forthright with Congress";

"Wake up and quit trying to 'get approval' from DOI ... we have a job to do";
and

"Be careful with how much reports get softened to avoid 'slamming' the Department in the interest of maintaining a good relationship."

In response to this survey, Jeff Ruch stated:

"... this watchdog is not just on a very tight leash, it is on a choke chain."

"Under the current system, IGs revel in petty scandals and flee profound corruption."

The case for scientific misconduct at NPS (having now spread to MMC and USGS as well) is one of profound corruption, with involvement at the highest levels, and thus unlikely, in the words of PEER Executive Director Jeff Ruch, to get an appropriate investigation by the DOI OIG. In this case, the DOI OIG has shown its inability over and over again to conduct truly independent investigations.

e. DOI OIG: House Committee on Natural Resources investigative report confirms that they pull their punches.

On February 21, 2013, Congress released a report documenting those criticisms alluded to 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 not to find 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, then it is even less likely that the internal Scientific Integrity Officers can function in an independent fashion, as described below.

3. The MMC Does Not Have a Scientific Integrity Officer.

The MMC does not have a Scientific Integrity Officer, and even if they did, it is unlikely that such a person would be in a position to independently investigate the Executive Director, which is why the MMC General Counsel proposed on November 7 (in his interview with The West Marin Citizen newspaper) that this investigation be conducted by OSTP.

4. The NPS Scientific Integrity Officer is Conflicted.

As I wrote to DOI Inspector General Kendall on April 24, 2012, Dr. Machlis, NPS Scientific Integrity Officer is conflicted. First, Dr. Machlis, NPS Scientific Integrity Officer and Science Advisor, reports to NPS Director Jarvis, the person at the center of this dispute for six years and for whom unresolved charges of scientific misconduct pre-date his appointment as Director. Second, Dr. Machlis demonstrated his conflicts by his actions and words.

The Department of Transportation VOLPE 2011 Report (cited in the FEIS) is a public document. The data used to generate that published report should be publicly available. I requested the VOLPE data from the lead author and she referred me to the NPS soundscape scientists at Fort Collins. For nearly a week in early April 2012, the NPS scientists were cooperative and collegial, responding to my emails, supplying me with some of the requested data, and providing guidance on clarification of methods.

Beginning on April 13, 2012, they abruptly stopped responding to my emails and stopped supplying the requested data. On April 16, I wrote to Dr. Machlis and asked him to help facilitate my data request. He did not respond. I asked him again on April 18. On April 19, Dr. Machlis wrote:

"I have received your emails and review each carefully as it comes in. We are following DOI policies on allegations of scientific misconduct."

According to Dr. Machlis, he initiated a scientific misconduct review. However, there exists no such scientific misconduct review by Dr. Machlis in the available record. If Dr. Machlis did initiate a review, then the resulting report disappeared. I was neither interviewed nor asked to clarify a single substantive issue. Dr. Machlis failed to respond to my data request and gave no assurance that I would receive the requested data.

Finally, on Friday April 20, I was contacted by the NPS branch chief in Fort Collins, not the scientists, and directed to file a FOIA request to obtain the data. One week earlier, the NPS scientists were collegial and sharing data. The next week they went silent, and their supervisor told me I must file a FOIA request to obtain the relevant data, data I requested 18 days earlier. All of this hindered and restricted my scientific analysis and violated the DOI Code of Scientific and Scholarly Conduct.

Dr. Machlis, by all indications, appeared to be a participant in the decision to prevent me from obtaining relevant data from a published study (VOLPE 2011 Report) and hindered my scientific analysis. The DOI Code of Scientific and Scholarly Conduct states:

"I will not intentionally hinder the scientific and scholarly activities of others ..."

"I will fully disclose methodologies used, all relevant data..."

Dr. Machlis became a participant of an investigation, rather than the investigator. Clearly, Dr. Machlis should not oversee— or have any management involvement — an investigation of NPS scientific misconduct.

5. The DOI Scientific Integrity Officer is Conflicted.

Dr. Morgenweck, Interior's Scientific Integrity Officer (from 2011 to the first half of 2012), also had a conflict of interest. Dr. Morgenweck commissioned the ATKINS peer-review of the NPS DEIS *"in recognition of high interest in the science."* Dr. Morgenweck then released the ATKINS peer-review of the DEIS on March 19, 2012. In the DOI Office of the Secretary news release, he was quoted as follows:

"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," stated Dr. Ralph Morgenweck, Interior's Scientific Integrity Officer.

We now know that the ATKINS Report was tainted by the NPS decision to include false representations of soundscape data in the DEIS. The peer-reviewer of the soundscape analysis, Dr. Christopher Clark of Cornell University, was, by his own words, *"deceived."* Upon seeing the origin of the data he reviewed, and the real data collected at Drakes Estero by ENVIRON, Dr. Clark changed his major conclusion in a conversation with me. Thus, the peer review was corrupted by NPS misrepresentations.

By including Dr. Morgenweck in commissioning the tainted peer-review of the DEIS, and quoting him as giving praise to the report in the Interior press release accompanying the public release of the ATKINS peer review, Interior included their SIO as part of the

EIS process, rather than as someone who could independently evaluate allegations of scientific misconduct.

From the outset of the DOI OIG investigation into the allegations of misconduct against NPS in May 2012, I was told that both Dr. Machlis and Dr. Morgenweck were going to come out to California to interview me at length to discuss the data and allegations of misconduct. As described above (DOI OIG: example 3#), the DOI SIO and NPS SIO, even though represented by the DOI OIG and invited by me in May 2012 to participate in the investigation of NPS scientific misconduct, neither one of them ever talked to me, let alone interviewed me. Neither asked a single question or sought any substantive information about my allegations of scientific misconduct.

In summary, neither NPS nor DOI are capable of investigating their own organizations when it comes to allegations of scientific misconduct involving high-level officials, including the NPS Director. There are simply too many layers of conflicts.

6. USGS Has a Scientific Integrity Officer, But She Has Been Unresponsive.

The USGS has a Scientific Integrity Officer: Dr. Linda Gundersen. On December 16, 2012, I spoke by telephone with Dr. Marcia McNutt, Director, USGS, about the misrepresentations of the Stewart Report in the USGS Report, and the sequential misrepresentations of the USGS Report in the NPS FEIS. She was familiar with the 2012 USGS Report concerning the NPS photographs at Drakes Estero.

I described to Dr. McNutt the Stewart Report, and Dr. Stewart's finding of "*no evidence of disturbance*" by the oyster farm for the exact dates and times in which the USGS Report claimed that Dr. Stewart found an association, or weak correlation, and the NPS FEIS subsequently claimed cause-and-effect. Dr. McNutt was disturbed by the revelations. She asked me to send her the Stewart Report, and said that she would ask Dr. Linda Gundersen, USGS Scientific Integrity Officer, to investigate the issue.

On December 17, I sent the Stewart Report and my analysis to Dr. McNutt, and wrote:

It appears that the USGS report misrepresented Dr. Stewart's analysis in Appendix 1, and then incorrectly concluded that there was an association of the DBOC boat with the harbor seal disturbance on May 15, 2008. Finally, the NPS FEIS misrepresented the USGS report and claimed that the USGS had attributed the May 15, 2008 disturbance to the DBOC boat. Two layers of successive misrepresentations led to the opposite conclusion by NPS as compared to harbor seal expert Dr. Brent Stewart.

I appreciate your willingness to investigate this issue. As you can imagine, this is a very important matter for the DBOC-NPS issue. But I also think this is a very important matter for USGS, which has long been the most trusted scientific body in the U.S. government.

Dr. McNutt did not respond. On December 23, 2012, I wrote again:

I wanted to get back to you about the materials that I sent you last Monday. I have extensive notes from my conversation with Dr. Lellis, and my many emails back and forth with him. When will the USGS Scientific Integrity Officer be contacting me and arranging for an interview? Would you please send me a copy your directive or memo to the USGS SIO specifying the nature of your request. Thank you for recognizing the significance of the apparent contradictions

between Dr. Stewart's report, the USGS report, and the NPS FEIS. ...

Thanks very much. I look forward to receiving your directive, and speaking with your Scientific Integrity Officer about my conversations and emails.

Neither Dr. McNutt nor Dr. Gundersen responded. I never heard back from either one of them. It is now one month since I first notified USGS that the USGS Report misrepresented the Stewart Report, and I have not been contacted by the Scientific Integrity Officer, and have not been interviewed about my lengthy conversation and email exchanges with the senior author of the USGS Report.

The USGS has yet to acknowledge my complaint and have not indicated that an investigation was initiated I have not been contacted. I have not been interviewed.

Given the lack of communication and transparency concerning the potential investigation of the USGS Report by the USGS Scientific Integrity Officer, and the connection with the NPS FEIS, this further disqualifies anyone at DOI from managing this investigation of the misrepresentation and falsification in the USGS Report, and the sequential misrepresentation and falsification in the NPS FEIS. Both misrepresentations concern the original finding of "no evidence of disturbance" by Dr. Stewart in the Hubbs SeaWorld Stewart Report. Dr. Stewart's May 12, 2012 Report was contracted by NPS, and sent to both NPS and USGS, and thus this investigation involves NPS and USGS, and how Dr. Stewart's scientific analysis became misrepresented by both agencies.

On January 17, 2013, I wrote to Dr. Gundersen:

"I write to ask for an update of your investigation of the USGS Report misrepresentation of the Stewart Report. Are you in fact conducting an investigation? When will you be interviewing me?"

First you need to determine if the USGS Report in fact misrepresented the Stewart Report, and if so, if that misrepresentation was done intentionally, knowingly, or recklessly. Please focus on one particular date: May 15, 2008.

Second, if you find that the USGS Report misrepresented the Stewart Report, then I ask you to retract or correct the USGS Report, and to publicly notify the NPS (and public) that they need to revise their Final EIS on Drakes Estero in that the USGS Report was incorrect, and the NPS further misrepresented your report.

It should not surprise you that once a federal scientific document is released into the public domain, unless corrected or retracted, it can and will be used in decision-making processes throughout the nation, and around the world. In this case, I have already been notified that the NPS FEIS has been raised in cases involving mariculture in two other states, and in two other countries.

After examining the videos of the NPS photographs prepared by USGS, Dr. Brent Stewart wrote in his report that he found no evidence for disturbances by the oyster farm. Your USGS Report incorrectly listed that as a finding of two associations (a correlation), and the NPS FEIS further incorrectly listed that as a finding of two attributions (cause and effect), thus allowing them to conclude a moderate adverse impact of the oyster farm on the harbor seals. I ask you to please correct the public documents and public record."

Dr. Gundersen did not reply. I wrote back on January 23, 2013:

I have not heard back from you since my email of January 17. It is now over one month since I alerted Dr. McNutt to this issue that the authors of the USGS

Report misrepresented the Stewart Report, and she agreed to investigate whether this misrepresentation was done intentionally or knowingly, or was an honest error.

I am puzzled by your silence over the past month. When do you plan on interviewing me?

When I spoke with USGS Director Dr. McNutt on December 16, she indicated that there were two alternatives: either Dr. Stewart changed his conclusions after filing his May 2012 Stewart Report with NPS and USGS, in which case there should be a written record of that change, or alternatively someone misrepresented his report in the USGS Report. Have you determined which alternative is correct?

To date, Dr. Gundersen has not responded to my emails, has not confirmed if she is or is not conducting an investigation, has not interviewed me, has not sought additional information from me, and if she has conducted an investigation, has not informed me of the outcome. Surely, such behavior is not consistent with what OSTP intended for the White House Scientific Integrity Policy.