

Appendix 3:

Overview of the History of NPS Scientific Misconduct

Table of Contents

1. The White House Scientific Integrity Policy	2-3
2. The White House and DOI Definitions of Scientific Misconduct	3-5
3. NPS And DOI Assert Claims of Scientific Misconduct Are Meritless	6-8
4. Allegations of Scientific Misconduct Submitted to NPS Regional Director Jarvis in July 2007.....	9
5. Allegations of Scientific Misconduct Submitted to NPS Director Bomar in December 2007.....	9-10
6. NPS Regional Director Jarvis Denied Any Misrepresentations in December 2007	10
7. The DOI Office of Inspector General (OIG) Report from July 2008.....	10-12
8. The National Academy of Sciences (NAS) Report from May 2009	12-13
9. Allegations of Scientific Misconduct Submitted to the DOI Secretary in May 2009 .	14-15
10. The DOI Frost Report from March 2011	15-27
a. How Did the Frost Report Find Administrative Misconduct?.....	17-19
b. How did the Frost Report Not Find Intent?.....	19-23
c. How did the Frost Report Describe the “Informant”?.....	23-27
11. The Marine Mammal Commission Report from November 2011	27
12. Allegations of Scientific Misconduct Submitted to the Department of Commerce OIG in November 2012	28-29
13. Allegations of Scientific Misconduct Submitted to the U.S. Geological Survey Scientific Integrity Officer in December 2012	29-32
14. Allegations of Scientific Misconduct Submitted to the DOI OIG in April 2012	32-38
15. Response to Assertion That Other Scientists do not Support My Analysis	38-39
16. Senator Feinstein’s statement on January 30, 2013.....	39

1. The White House Scientific Integrity Policy

In addressing the National Academy of Sciences (NAS) on April 27, 2009, President Obama eloquently said:

“And we have watched as scientific integrity has been undermined and scientific research politicized in an effort to advance predetermined ideological agendas. I know that our country is better than this.”

“... we are restoring science to its rightful place.”

“... the days of science taking a back seat to ideology are over.”

“I want to be sure that facts are driving scientific decisions – and not the other way around.”

Policy, the President told us, would be driven by good science, not false science being driven by predetermined agendas. The country’s top scientists gave him a standing ovation.

As you summarized in your White House blog on December 17, 2010, *“On March 9, 2009, President Obama issued a Presidential Memorandum on Scientific Integrity emphasizing the importance of science in guiding Administration decisions and the importance of ensuring that the public trusts the science behind those decisions.”* The President wrote:

“The public must be able to trust the science and scientific process informing public policy decisions. Political officials should not suppress or alter scientific or technological findings and conclusions.”

“By this memorandum, I assign to the Director of the Office of Science and Technology Policy (Director) the responsibility for ensuring the highest level of integrity in all aspects of the executive branch’s involvement with scientific and technological processes.”

Twenty-one months later, on December 17, 2010, you issued a Memorandum to the Heads of Departments and Agencies that provided further guidance to Executive Branch leaders as they implemented Administration policies on scientific integrity.

In your White House blog, you wrote:

“...although this Memorandum is new, scientific integrity has been a White House priority since Day One of this Administration.”

In your Memorandum, you wrote about the guiding principle to *“ensure a culture of scientific integrity.”* You wrote:

“Science, and public trust in science, thrives in an environment that shields scientific data and analyses from inappropriate political influence; political officials should not suppress or alter scientific or technological findings.”

You asked all agencies to report to you within 120 days the actions they had taken to develop and implement your scientific integrity policy. The DOI established their Scientific Integrity Policy in February 2011. USGS followed in March 2011. The MMC followed in March 2011, and then submitted a revised policy in February 2012.

As described above, in spite of your Memorandum in December 2010, and the MMC response to you in 2011 and 2012 stating that they had complied with your directive, the MMC lacks any scientific integrity oversight. Although the MMC responded on March 29, 2011 and claimed that the Department of Commerce (DOC) Office of the Inspector General (OIG) provided oversight for them, in fact the DOC OIG stated on December 19,

2012 that it does not provide oversight, lacked financial resources, lacked jurisdictional authority, and thus rejected to investigate a scientific misconduct complaint.

President Obama, in his January 16, 2013 press release concerning Secretary Salazar's announcement that he will step down from his role as Secretary and return to Colorado, praised the Secretary, believing he had implemented the Federal Scientific Integrity Policy, stating:

"... Ken has ensured that the Department's decisions are driven by the best science and promote the highest safety standards."

Thus, on behalf of the President and your tenure as Director, OSTP, it is imperative that OSTP assure the integrity of its flagship White House Scientific Integrity Policy. There is no place other than OSTP to establish and oversee an investigation of scientific misconduct involving three federal agencies: NPS, USGS, and MMC.

The MMC has no OIG and no Scientific Integrity Officer. The NPS and USGS have an OIG that appears to have abdicated its timely and responsive investigatory oversight for such matters. The NPS and DOI Scientific Integrity Officers are conflicted. The USGS SIO has remained unresponsive. The DOC OIG rejected a complaint on jurisdictional grounds. The only path forward for upholding the White House Scientific Integrity Policy is to bring this matter to the White House OSTP.

2. The White House and DOI Definitions of Scientific Misconduct

The Federal Policy on Research Misconduct (published in the Federal Register by OSTP on December 6, 2000) defined research misconduct as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. The Policy states:

- ***Fabrication** is making up data or results and recording or reporting them.*
- ***Falsification** is manipulating research materials, equipment, or processes, or changing or omitting results such that the research is not accurately represented in the research record.*
- ***Plagiarism** is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.*
- *Research misconduct does not include differences of opinion.*

***Findings of Research Misconduct.** A finding of research misconduct requires that:*

- *There be a significant departure from accepted practices of the relevant research community; and*
- *The misconduct be committed intentionally, or knowingly, or recklessly; and*
- *The allegation be proven by a preponderance of evidence.*

The Office of Science and Technology Policy received 237 comments on the proposed Federal Research Misconduct Policy.

Issue: Several comments requested clarification regarding the level of intent that is required to be shown in order to reach a finding of research misconduct.

Response: Under the policy, three elements must be met in order to establish a finding

of research misconduct. One of these elements is a showing that the subject had the requisite level of intent to commit the misconduct. **The intent element is satisfied by showing that the misconduct was committed “intentionally, or knowingly, or recklessly.” Only one of these needs to be demonstrated in order to satisfy this element of a research misconduct finding.**

Issue: Shouldn't the burden of proof be more stringent, e.g., require “clear and convincing evidence” to support a finding of research misconduct?

Response: While much is at stake for a researcher accused of research misconduct, even more is at stake for the public when a researcher commits research misconduct. **Since “preponderance of the evidence” is the uniform standard of proof for establishing culpability in most civil fraud cases and many federal administrative proceedings, including debarment, there is no basis for raising the bar for proof in misconduct cases which have such a potentially broad public impact.** It is recognized that non-Federal research institutions have the discretion to apply a higher standard of proof in their internal misconduct proceedings. However, when their standard differs from that of the Federal government, research institutions must report their findings to the appropriate Federal agency under the applicable Federal government standard, i.e., preponderance.

There are two key features of the Federal Policy on Research Misconduct. First, it must be established that the misconduct was committed “intentionally, or knowingly, or recklessly.” Second, it must be determined the misconduct was based upon a “preponderance of the evidence” – the standard for civil fraud, not the standard (clear and convincing evidence, or higher still, beyond a reasonable doubt) for criminal prosecution.

The Department of the Interior, in its Departmental Manual (January 28, 2011, Chapter 3, Integrity of Scientific and Scholarly Activities), went deeper in defining scientific misconduct and the code of scientific conduct. In response to the Presidential Memorandum of March 9, 2009 and the OSTP Memorandum of December 2010, the DOI Policy stated:

“supports a culture of scientific and scholarly integrity” and “will not tolerate loss of integrity in the performance of scientific activities or in the application of science and scholarship in decision making.”

In Section 3.5.M, DOI defined Scientific and Scholarly Misconduct as follows:

- (1) *Fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and scholarly activities, or in the products or reporting of the results of these activities. (Federal Policy on Research Misconduct, 65 FR 76260-76264, December 6, 2000.)*

Misconduct also includes: (a) intentionally circumventing policy that ensures the integrity of science and scholarship, and (b) actions that compromise scientific and scholarly integrity. Scientific and scholarly misconduct does not include honest error or differences of opinion.

- (2) *Fabrication, falsification, or plagiarism in the application of scientific and scholarly information to decision making, policy formulation, or preparation of materials for public information activities.*
- (3) *A finding of scientific and scholarly misconduct requires that:*
 - a. *There be a significant departure from accepted practices of the relevant scientific and scholarly community.*

- b. *The misconduct be committed intentionally, knowingly, or recklessly.*
- c. *The allegation be proven by a preponderance of evidence.*

The key words in the DOI definition of scientific misconduct are that a finding requires that the misconduct be committed “*intentionally, knowingly, or recklessly*” and that the allegation be proven by a “*preponderance of evidence.*”

In Section 3.7, DOI defined the Code of Scientific and Scholarly Conduct as follows for all Departmental employees, volunteers, and contractors:

- (1) *I will act in the interest of the advancement of science and scholarship for sound decision making, by using the most appropriate, best available, high quality scientific and scholarly data and information to support the mission of the Department.*
- (2) *I will communicate the results of scientific and scholarly activities clearly, honestly, objectively, thoroughly, accurately, and in a timely manner.*
- (6) *I will not intentionally hinder the scientific and scholarly activities of others or engage in scientific and scholarly misconduct.*
- (7) *I will clearly differentiate among facts, personal opinions, assumptions, hypotheses, and professional judgment in reporting the results of scientific and scholarly activities and characterizing associated uncertainties in using those results for decision making, and in representing those results to other scientists, decision makers, and the public.*
- (9) *I will be responsible for the quality of the data I use or create and the integrity of the conclusions, interpretations, and applications I make. I will adhere to appropriate quality assurance and quality control standards, and not withhold information that might not support the conclusions, interpretations, and applications I make.*

In addition, for Scientists and Scholars, Section 3.7.B states:

- (1) *I will place quality and objectivity of scientific and scholarly activities and reporting of results ahead of personal gain or allegiance to individuals or organizations.*
- (2) *I will maintain scientific and scholarly integrity and will not engage in fabrication, falsification, or plagiarism in proposing, performing, reviewing, or reporting scientific and scholarly activities and their products.*

Finally, for Decision Makers, Section 3.7.C states:

- (1) *I will do my best to support the scientific and scholarly activities of others and will not engage in dishonesty, fraud, misrepresentation, coercive manipulation, censorship, or other misconduct that alters the content, veracity, or meaning or that may affect the planning, conduct, reporting, or application of scientific and scholarly activities.*

These are the standards I consider below in discussing previous investigations into allegations of NPS scientific misconduct, and in bringing forward new allegations of scientific misconduct. Did the investigators or reviewers consider and adhere to the DOI standards of whether the alleged misconduct was committed “*intentionally, knowingly, or recklessly*” and that the allegation be proven by a “*preponderance of evidence*”?

Did they consider whether NPS officials or scientists violated the Code of Scientific and Scholarly Conduct? How did they define a violation of the Code of Scientific Conduct?

3. NPS And DOI Assert Claims of Scientific Misconduct Are Meritless

Starting in 2007, the NPS repeatedly asserted that they have not misrepresented the scientific data at Point Reyes. Since 2009, the NPS and DOI have repeatedly asserted that multiple reviews by the DOI OIG, NAS, Solicitor's Office, and MMC have investigated the allegations of scientific misconduct, and yet NPS has not been found guilty of scientific misconduct -- not once. Thus, NPS and DOI recently argued, both the past and the current allegations are meritless.

On May 30, 2012, the DOI Office of the Secretary made this argument in writing to two U.S. Senators – David Vitter and James Inhofe – in response to their inquiry concerning the DOI OIG's actions in July 2009 involving allegations of scientific misconduct 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 Vitter and 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. These concerns have been investigated by the Department's Office of the Inspector General, the National Academy of Sciences, the Department's Office of the Solicitor, and the Marine Mammal Commission. Not one of these independent investigations or scientific reviews has found any facts or made findings to support the very serious allegations of wrongdoing, serious or minor, against National Park Service Director Jon Jarvis.”

As described above (in section “DOI OIG: example #1”), Ms. Jacobson failed to tell the two Senators that of the 21 points of misconduct outlined in my 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 Committee 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.

Thus, the DOI OIG action in July 2009 is irrelevant to the assertion that the allegations of scientific misconduct have been adjudicated, and both NPS and Director Jarvis cleared of all charges. But what of Jacobson's assertion that the 2008 DOI OIG Report cleared NPS of misconduct, as did the 2009 NAS Report, 2011 DOI Solicitor's Frost Report, and 2011 MMC Report? Below I show that the DOI is incorrect and misleading in their characterization of those reviews. None of them cleared NPS of misconduct.

The DOI made the same assertion of a finding of no scientific misconduct again in writing on January 9, 2013 to Judge Yvonne Gonzales Rogers, U.S. District Court, Northern California. In their opposition to the oyster farm motion for a preliminary injunction, DOI wrote (Case No. 4:12-cv-06134-YGR, section 3.b, pg. 19-21):

“Furthermore, plaintiffs' accusations of “scientific misconduct” themselves lack merit. Plaintiffs rest their accusations on four reports concerning the Park Service's research and regulation of the Company's operations over the years: (1) a 2008 report from the Interior Office of Inspector General (“OIG”); (2) a 2009 report from the National Academy of Sciences (“NAS”); (3) a 2011 report from the DOI Solicitor's Office; and (4) a second NAS report from 2012. Of these

reports, only the 2012 NAS Report addressed the DEIS or FEIS. And none of the reports found evidence of “scientific misconduct”—which by definition involves an element of intent to defraud, deceive, mislead, or recklessly disregard the truth. ... Although the 2008 OIG Report found that NPS personnel “could have exercised better judgment and expressed NPS’ position with greater clarity and transparency,” neither it nor the 2011 DOI Solicitor’s Report found evidence of scientific misconduct. ...”

U.S. Department of Justice (DOJ) attorney Stephen Macfarlane, on behalf of DOI, repeated these arguments to U.S. District Court Judge Rogers on Friday January 25, 2013. In a hearing on the oyster farm motion for a preliminary injunction, Mr. Macfarlane stated:

“I would simply say in response to Mr. Waterman [DBOC counsel], if your Honor reads the Interior – Inspector General’s Report, Investigative Report [2008 DOI OIG Report], you will find that there is no finding of scientific misconduct. True, the Inspector General did find that a few Park Service employees exercised poor judgment, made some mistakes, may have made some misstatements, but this did not rise to the level of scientific misconduct.

The Sheltered Wilderness Report that he refers to and the plaintiffs allude to in their reply brief is nowhere mentioned in either the EIS or in the Secretary’s memorandum of November 29th. It was never relied on in any way in any of the evaluations of this – of DBOC’s permit application. If you look at the Solicitor’s Report [the 2011 Frost Report], which is also in the record before you, that specifically considered the scientific misconduct allegations that DBOC had made and the people purporting to act on DBOC’s behalf had made. And it, again, found no evidence of scientific misconduct.

Mr. Waterman, I think, is incorrectly reading the Final Environmental Impact Statement [FEIS]. I would invite your Honor to go and read what that statement actually says about the evidence attributed to these photographs and the impact on harbor seals from boating operations in Drakes Estero. It doesn’t say what he says it says.

At the end of the day, I think the scientific misconduct charge has been thrown about rather recklessly. We strongly disagree with it.

So when push comes to shove and we are talking about scientific matters and technical matters, I think basically this boils down to a disagreement among experts. And if we get to the point in this litigation where we have an opportunity to address that, I think we will be able to establish that that’s not something that the court should weigh in on.”

Thus, the DOI, as represented by DOJ counsel, claims that I have alleged misconduct “recklessly,” and that “this boils down to a disagreement among experts” (implying a disagreement about interpretation of data). In reality, this boils down to a repeated pattern of misrepresentations of facts – not different interpretations of facts. The DOI also misrepresented history and the various reports to the Federal Judge.

The DOI counsel told Judge Rogers that the FEIS did not say what I reported about the evidence of disturbances of harbor seals by the oyster farm. This was a clear misrepresentation of the facts by DOI in defending. The NPS FEIS misrepresented the USGS Report, and the USGS Report misrepresented the Stewart Report. On this, there is no ambiguity. This is not a matter of interpretation. Dr. Brent Stewart found “no evidence of disturbance” by the oyster farm. OSTP should address these misconduct

charges and require NPS to explain why and how my declaration to Judge Rogers (to which counsel for both sides were citing) was incorrect.

The DOI asserted that the accusations of “*scientific misconduct*” lack merit, but, as shown below, they selectively quoted from the reports cited, and they did not deny that NPS has repeatedly misrepresented its own data and shown bias in its reports.

The 2008 DOI OIG Report went beyond a finding that NPS personnel “*could have exercised better judgement*” as DOI quoted. This is true, but only part of their findings. The OIG found that an NPS scientist had knowingly “*misrepresented research*” and “*privoy to information contrary*” to what NPS published, but “*did nothing to correct the information before its release to the public.*” To knowingly misrepresent data is the basis of the definition of misconduct as defined by the Federal Policy on Research Misconduct.

The 2009 NAS Report found that NPS had “*selectively presented, over-interpreted, or misrepresented ...*” its own data. Both of these reports explicitly did not consider a finding of misconduct, the 2008 OIG Report because Interior had no Code of Scientific and Scholarly Conduct at the time, and the 2009 NAS Report because they publicly announced they would not consider the issue.

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 OIG report).

The DOI Frost Report 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 – as they did with Judge Rogers on January 25, 2013 – that there was no scientific misconduct.

Concerning NPS misrepresentations of soundscape data in the NPS DEIS, a 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. As of January 2013, the DOI OIG has not released the findings of its investigation.

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. Thus, Jarvis asserted, NPS science is beyond accountability.

DOI and NPS went to great lengths to insist that there was no finding of scientific misconduct in various reports and investigations undertaken between 2007 and 2012. That claim is a distortion of the record and a misrepresentation of events. The assertion that NPS did not engage in scientific misconduct is misleading, as described below.

Below I will consider each submission of allegations of misconduct, and each review, and ask (i) was the review independent?, (ii) what was reviewed?, (iii) was misconduct considered?, (iv) what criteria were followed?, and (v) what was found?

4. Allegations of Scientific Misconduct Submitted to Regional Director Jarvis in July 2007.

On July 21, 2007, Senator Feinstein held a meeting at the Olema Inn (called the Olema meeting) with then-NPS Director Mary Bomar, then-Regional Director Jon Jarvis, Superintendent Neubacher, Mr. Lunny (owner, DBOC), me, and others. At the end of the meeting, I handed a copy of a 26-page document to both Mr. Jarvis and DOI Associate Solicitor Molly Ross, entitled:

“A Case of Scientific Fraud: A Pattern of Intentional Misrepresentation of Science by the PRNS in its Claims of Negative Impact of the Oyster Farm on Drakes Estero.”

I spoke with both Mr. Jarvis and Ms. Ross about the allegations that focused on the intentional misrepresentation of data concerning sediments and oyster feces, and of a 1991 paper from USGS scientist Dr. Roberto Anima. NPS cited data, purported to be from DBOC and Drakes Estero, that came from an oyster farm in Japan – a half-century prior – in 1955. The NPS science misrepresented science from 5,000 miles away and five decades earlier. This was my first submission of allegations of scientific misconduct to a federal agency. It was also my first experience with a lack of responsiveness to such a complaint by both NPS and DOI.

Neither Mr. Jarvis (NPS) nor Ms. Ross (DOI) responded to the allegations of misconduct. NPS removed its report from the web and posted a correction to this misrepresentation of the USGS Anima paper on the PRNS website four days later, on July 25, 2007. NPS, however, did not conduct a misconduct review, and did not respond to my complaint.

Although the NPS and DOI failed to investigate these allegations, the DOI OIG later did, and the following summer, the 2008 DOI OIG Report found that NPS Dr. Sarah Allen knowingly misrepresented the Anima paper in the NPS Drakes Estero Report – the first official finding of misconduct.

5. Allegations of Scientific Misconduct Submitted to Director Bomar in December 2007.

On December 18, 2007, I submitted a 77-page misconduct and ethics complaint to NPS Director Mary Bomar, detailing the case (at the time) for scientific misconduct by NPS Regional Director Jon Jarvis and PRNS Superintendent Don Neubacher. In the complaint, I described the NPS claims that the oyster farm was harming the harbor seals in Drakes Estero. Concerning the testimony of NPS Superintendent Neubacher and scientist Dr. Allen on May 8, 2007 to the Marin County Board of Supervisors, I wrote:

“In conclusion, the PRNS made one false accusation after another in terms of the impact of the oyster farm on the harbor seals. This is not an issue of interpretation, but rather it is an issue of deliberate and flagrant misrepresentation of the facts. ... None of their claims is supported by their own NPS database.”

Director Bomar’s associate, Melissa Kuckro, responded on January 4, 2008, saying that Director Bomar had instructed Deputy Director Dan Wenk to respond to this ethics complaint. Ms. Kuckro wrote:

“Thank you for the letter you sent by email to Director Mary Bomar on December 21, 2007, regarding Drakes Estero. The Director asked me to let you know that

she received it and that she has asked Deputy Director Dan Wenk to handle this issue and to communicate further with you about it."

That was the last communication I received on this issue from anyone at NPS. The scientific misconduct complaint, like the complaint submitted to Ms. Ross and Mr. Jarvis at Olema, went unanswered and unaddressed. I received no further communications from Mr. Wenk or anyone else at NPS concerning these allegations of scientific misconduct.

6. NPS then-Regional Director Jarvis Denied Any Misrepresentations in December 2007.

On December 28, 2007, just one week after I submitted the 77-page misconduct complaint to NPS Director Bomar, then-West Regional Director Jon Jarvis publicly denied that NPS had misrepresented its own scientific data. In the San Francisco Chronicle on December 28, 2007, when confronted with allegations that NPS had misrepresented its own data, staff writer Peter Fimrite quoted then-West Regional Director Jarvis as follows:

"There are some inherent differences of opinion about whether there is a positive or negative effect on eelgrass, harbor seals and general water quality," said Jon Jarvis, the regional director for the Pacific West division of the National Park Service. "Our research would indicate there are some negative effects." Park service officials recently complained that Lunny expanded his operation to an area historically used by female harbor seals and their pups and that oyster boats were observed scaring off seals in the area. The park service said harbor seals declined from 250 to 50 in the area Lunny recently developed. Park service officials deny any misrepresentations were made and have stood firmly behind their research."

This public statement by Mr. Jarvis contradicted (i) the July 25, 2007 NPS public retraction of the misrepresented oyster feces and fish claims from the Drakes Estero Report, and (ii) the September 17, 2007 document released by Mr. Jarvis entitled *NPS Clarification of Law, Policy, and Science on Drakes Estero* (the NPS Clarification Report) in which NPS retracted most of the misrepresented claims in the Drakes Estero Report. Moreover, Mr. Jarvis made this public assertion that NPS had not misrepresented any data just one week after a 77-page misconduct complaint was filed with his superior, NPS Director Bomar, concerning just such misrepresentations of data.

7. The DOI Office of Inspector General (OIG) Report from July 2008.

On July 21, 2008, the DOI OIG released the public, redacted version of their report entitled *"Investigative Report on Point Reyes National Seashore."* They wrote:

"Our investigation determined that in this report [the NPS Drakes Estero Report] and in a newspaper article [April 26, 2007 article in Pt. Reyes Light by Dr. Sarah Allen], PRNS Senior Science Advisor Sarah Allen had misrepresented research regarding sedimentation in Drakes Estero completed in the 1980's by U.S. Geological Survey scientist Roberto Anima."

"While Allen denied any intentional misrepresentation of Anima's work, our investigation revealed that Allen was privy to information contrary to her characterization of Anima's findings in the Sheltered Wilderness Report and

other public releases, and she did nothing to correct the information before its release to the public."

The DOI OIG found that Dr. Allen had misrepresented the research of USGS Dr. Roberto Anima. Although Dr. Allen denied that her misrepresentation was intentional, the DOI OIG found that Dr. Allen was privy to information contrary to her characterization of Dr. Anima's paper, and yet she did nothing to correct the misrepresentation. This finding falls within the current DOI definition of scientific misconduct – Dr. Allen had knowingly misrepresented scientific data.

Yet the DOI OIG did not formally conclude scientific misconduct, because, during the course of this investigation, they discovered that both NPS and DOI lacked a scientific integrity policy, and lacked a code of scientific and scholarly conduct. They wrote:

"The complainants alleged "scientific misconduct" against Neubacher and Allen. Based upon those allegations and other indications of improprieties regarding the accuracy of scientific information reported by PRNS, OIG investigators attempted to locate a code of conduct applicable to DOI and/or NPS employees involved in reporting the results of scientific research.

Our investigation determined that NPS did not have a "Scientific Code of Conduct" in place until a document titled, "Interim Guidance Document Governing Code of Conduct, Peer Review, and Information Quality Correction for National Park Service Cultural and Natural Resource Disciplines" (Policy Guidance Document) was issued on January 31, 2008, contemporaneous to this investigation. Although the guidance document was labeled "interim" and was in draft form, it was to remain in effect "until amended or suspended." An NPS Scientist confirmed that NPS did not have its own Scientific Code of Conduct until the Policy Guidance Document was issued."

"When investigators were unable to locate either a Departmental or NPS Scientific Code of Conduct, the search was broadened to determine if there was an applicable code for the federal government as a whole. It was determined that the White House Office of Science and Technology Policy announced on December 6, 2000, the establishment of the "Federal Policy on Research Misconduct." According to the announcement, "The policy will apply to Federally-funded research regardless of where the research is conducted or by whom." The announcement also reported that federal agencies would have 1 year to implement the policy, which was published in the December 6, 2000 edition of the Federal Register."

Thus, the 2008 DOI OIG Report found that although Dr. Sarah Allen had knowingly misrepresented USGS Dr. Anima's paper, that neither NPS nor DOI had a valid Scientific Code of Conduct or other policy governing scientific misconduct, and thus they could make no finding concerning scientific misconduct.

In the October 2008 DOI OIG Semiannual Report to Congress, the OIG wrote:

"Our investigation determined that in this report [NPS Drakes Estero Report] as well as in a newspaper article, Point Reyes Senior Science Advisor Sarah Allen misrepresented sedimentation research completed in the 1980s by U.S. Geological Survey scientist Roberto Anima. In addition, we determined that she failed to provide a copy of a germane e-mail message between Anima and herself in response to a FOIA request that specifically sought such correspondence and she stated in a public forum that NPS had more than 25 years of seal data from

Drakes Estero when in fact this statement proved to be inaccurate.

While Allen denied any intentional misrepresentation of Anima's work, our investigation revealed that she had information that differed from her characterization of Anima's findings in the Sheltered Wilderness Report and other public releases. She also did nothing to correct the information before its release to the public. The results of our investigation were forwarded to NPS for the consideration of administrative action."

On April 28, 2010, the DOI OIG released an Evaluation Report entitled "*Interior Lacks a Scientific Integrity Policy*" as a follow-up to the Point Reyes investigation. They wrote:

"We found that Interior has no comprehensive scientific integrity policy and only one of its bureaus has such a policy. In addition, we found that Interior has no requirement to track scientific misconduct allegations. Without policies to ensure the integrity of its scientific research, Interior runs the risk that flawed information will reach the scientific community and general public, thereby breaching the public's trust and damaging Interior's reputation. The time for a comprehensive scientific integrity policy at Interior is, therefore, long overdue."

"The Department of the Interior (Interior) has never had, and currently operates without, a scientific integrity policy."

"In another example, a National Park Service (NPS) senior science advisor for Point Reyes National Seashore misrepresented research regarding sedimentation, failed to provide information sought after from a Freedom of Information Act request, and misinformed individuals in a public forum regarding sea life data, which put into question NPS scientific integrity."

"An Interior-wide comprehensive scientific integrity policy is long overdue and should not be relegated to the bureaus."

In summary, in its October 2008 Report to Congress, and in a April 2010 Evaluation Report, the DOI OIG reported that Dr. Allen had misrepresented research data, failed to provide information from a FOIA request, and misinformed the Marin County Supervisors in a public hearing, all of which "*put into question NPS scientific integrity.*" Nevertheless, the DOI OIG April 2010 Report argued, both NPS and DOI lacked a scientific integrity policy, and thus a finding of scientific misconduct could not be reached since there was no enforceable policy.

8. The National Academy of Sciences (NAS) Report from May 2009.

The NAS Report was released on May 5, 2009. Two months earlier, on March 19, 2009, William Colglazier (Chief Operating Officer, National Research Council, and Executive Officer, NAS) publicly announced what we had been privately told as early as January 2008. Concerning the NAS study on oyster farm in Drakes Estero, Mr. Colglazier's press release stated:

"This study was never intended to be an inquiry of potential scientific misconduct, and will make no such determination."

Whereas NPS Director Jarvis had asserted in December 2007 that NPS had not misrepresented its own data, the NAS Report, released on May 5, 2009, contradicted that conclusion. The NAS Report found:

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

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

The NAS acknowledged the controversy concerning the NPS claims of DBOC disturbances of harbor seals, and concluded that resolving the controversy:

“... would require a data collection system that could be independently verified, such as time and date stamped photographs. This verification is especially important in circumstances where there is an indication of a source of disturbance that could lead to a regulatory action, as was the case with disturbances attributed to DBOC.”

We now know that on May 5, 2009 when the NAS report was released, NPS had operated a two-year-long program collecting time and date stamped photographs from two secret cameras, and already knew that the photographs revealed no bona fide DBOC disturbances, but NPS said nothing to NAS, DBOC, elected officials, federal or state agencies, or the public. The secret cameras and photographs, and detailed NPS logs of the photos, were not discovered until summer 2010.

NPS scientist Dr. Sarah Allen was sent the detailed log containing the analysis of the NPS photographs from the 2008 pupping season on June 6, 2008. The log was 16 pages long, and revealed no bona fide DBOC disturbances. Dr. Allen and her NPS colleagues never revealed the 2008 log or its conclusions, let alone even the existence of the cameras and photos, to the NAS panel. She remained silent on the issue after the NAS Report was released, even though they proposed precisely what had been operational for several years.

On the same day, Senator Feinstein wrote that she found it *“troubling and unacceptable”* that the NPS had misrepresented their own scientific data.

In the San Francisco Chronicle the next day (May 6, 2009), then-West Regional Director Jarvis was quoted:

“They didn’t say our research was wrong. They just said it was incomplete,” Jarvis said. “What there really is here is a disagreement among scientists about the level of impact on the environment. That does not mean that one side is guilty of misconduct.”

To the contrary, the NAS did say that the NPS conclusions were wrong, and that the NPS misrepresented the data. To say *“they just said it was incomplete”* was misleading. DBOC, in a May 11, 2009 letter to Mr. Jarvis, asked NPS to correct the record with other federal and state agencies. NPS never corrected the record. The letter went unanswered. A request to Secretary Salazar’s office to compel a NPS response was similarly ignored.

9. Allegations of Scientific Misconduct Submitted to the DOI Secretary in May 2009.

As previously cited, I wrote to Secretary Salazar on April 27, May 10, and May 16, 2009 concerning scientific misconduct by then-NPS Regional Director Jon Jarvis and officials and scientists who reported to him. The May 16, 2009 letter to the Secretary described a 21-point case for scientific misconduct against Mr. Jarvis. Mr. Jarvis was directed to respond to the charges set forth in my letter. A day later, on May 17, he replied to the Secretary, but did so selectively. He did not respond to the 21 charges. Instead, he responded to only seven of the charges, excluding 14 altogether. The Secretary never mandated that the 21 allegations of scientific misconduct against Jon Jarvis be investigated. The Secretary did not answer or respond to any of my three letters.

Jon Jarvis was nominated by the President to serve as Director, NPS. The Senate held a confirmation hearing on July 28, 2009. At the time of the Jarvis confirmation hearing, 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. The Committee Chair, Senator Jeff Bingaman, read the memo at the beginning of the hearing and placed it formally into the hearing record.

The DOI OIG memorandum did not reveal that the OIG investigated only one of the 21-points of scientific misconduct in the complaint that I filed with Secretary Salazar on May 16, 2009. Mr. Jarvis had been unable to answer most of those 21 points when given the opportunity. However, Mr. Jarvis did provide an answer to a single issue with plausible deniability. It was that single issue (and only that issue of the 21) that the DOI OIG investigated and dismissed. Mr. Jarvis' one explanation, however misleading, became sufficient to dismiss all charges and mislead the US Senate.

Three years later, on May 30, 2012, the DOI Office of the Secretary repeated 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:

"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 (plural), when the OIG's precise wording was "*allegation*" (singular).

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 that Jarvis had previously answered. The DOI OIG never communicated with me about this matter after it was initially filed.

10. The DOI Frost Report from March 2011.

On November 22, 2010, I wrote to Interior Secretary Salazar and requested an investigation of allegations that NPS officials and scientists violated a series of federal government rules, regulations, and codes, and in so doing committed scientific misconduct. In brief, I alleged that NPS officials and scientists intentionally withheld key data – more than 280,000 minute-by-minute photographs from NPS secret cameras, and detailed NPS logs containing analysis of those photos – from the:

- 1) Investigation by the DOI IG (IG Report issued July 21, 2008),
- 2) National Academy of Sciences panel (NAS Report issued May 5, 2009),
- 3) Marine Mammal Commission panel (MMC Report pending in 2011), and
- 4) Various elected officials, press, and public.

The withheld photographic data – dating from May 2007 until June 2010 -- contradicted public claims these same NPS officials and scientists made to these investigations, panels, elected officials, and public. This constituted, according to the DOI Scientific Integrity Policy, as approved by DOI Secretary Salazar, scientific misconduct.

On November 24, 2010, Pacific West Regional Director Christine Lehnertz wrote and informed me that DOI Field Solicitor Gavin Frost would conduct a *“fact finding review of the harbor seal wildlife camera monitoring program”* at Point Reyes National Seashore.

On December 15, 2010, Field Solicitor Gavin Frost interviewed me for over 8 hours. When Mr. Frost interviewed me, he said it was not necessary to look at the NPS photographs on my computer because just days earlier, he had interviewed NPS Dr. Sarah Allen and Sarah Codde under oath, and they both told him, according to Mr. Frost, that the NPS photographs did not reveal any bona fide DBOC disturbances of harbor seals.

On January 24, 2011, DOI Field Solicitor Frost and I talked by telephone for 20 minutes at 5:43 pm PT. Mr. Frost told me that he found *“multiple NPS employees guilty of scientific misconduct.”* Mr. Frost concluded that the *“EIS [Environmental Impact Statement] process for the oyster company was tainted with the same bad science.”* Mr. Frost was aware that I had publicly disclosed this phone conversation (it was published in the Pt. Reyes Light newspaper on April 7, 2011), but he did not deny making those statements. Mr. Frost and I have spoken multiple times since on the telephone, and Mr. Frost never denied making those statements on January 24, 2011.

On January 26, 2011, Mr. Frost telephoned Mr. Lunny. Mr. Frost told Mr. Lunny that morning that his report was nearly finished and it would be submitted within a few days. However, the March 22 public version of the Frost Report contradicted what Mr. Frost told Dr. Goodman on January 24, 2011 and Mr. Lunny on January 26, 2011. Mr. Lunny also published his account of his conversation with Mr. Frost in the April 7, 2011 issue of the Pt. Reyes Light newspaper.

In a letter to Gavin Frost on April 4, 2011, Mr. Lunny recounted the details of a phone call with Mr. Frost at 7 am on January 26, 2011 and wrote:

“... you told me that had “found scientific misconduct” ...”

Mr. Lunny went on to write:

"We are at a complete loss to understand how you could tell me that you found "scientific misconduct" within a few days [on the eve] of finalizing your work and then, after six or seven weeks of internal, non-public review, your most fundamental conclusion was altered. Either you hung up the phone with me [on January 26, 2011] and then changed your report just before submitting it, or your report was amended after it arrived at the Solicitor's office."

In his email reply to Mr. Lunny on April 4, 2011, Mr. Frost did not deny Mr. Lunny's assertion, but rather replied that he would send a complete response to Mr. Lunny's letter by Friday April 7, 2011, and added that he took full responsibility for all statements in his report. Mr. Frost did not respond by the end of the week. Mr. Frost did not respond by the end of the month. Mr. Frost never responded.

On March 22, 2011, a redacted, revised public version of the Frost Report was released. Between late November and January, Field Solicitor Frost conducted his investigation, wrote his report in January, and submitted his report in early February. After initially insisting that the Frost Report would not be released, the Department reversed itself and released it in a redacted form in March.

The Frost Report summed up the situation when it concluded that NPS *"mistakes stem from the refusal ... to modify their intuitive, but statistically and scientifically unproven, belief that DBOC mariculture activities ..."* disturb harbor seals in Drakes Estero.

Frost concluded that the NPS scientists showed *"bias," "advocacy," "troubling mind-set," "mishandled" data, and "willingness to allow subjective beliefs ... to guide scientific conclusions."*

The Frost Report concluded: *"this misconduct arose from incomplete and biased evaluation and from blurring the line between exploration and advocacy through research."*

The Frost Report concluded that five NPS employees *"violated [the] NPS Code of Scientific and Scholarly Conduct"* (a code put in place after the 2008 OIG report). Those five NPS employees included Superintendent Neubacher and four NPS scientists (PRNS Dr. Allen, Mr. Press, Dr. Becker, and West Regional Chief Scientist Dr. Graber) who co-authored all of the reports on DBOC disturbances to harbor seals, including the paper (Becker et al., 2009) presented to the NAS panel, the paper (Becker et al., 2011) presented to the Marine Mammal Commission panel, and had input to key sections of the draft EIS.

"Further, SE2, S 1, S2, S3, and S4 violated NPS Code of Scientific and Scholarly Conduct language, from the Interim Guidance, that not only required timely and "full[] disclos[ure of] all research methods used [and] available data," but also obligated the NPS employees to "communicate the results of scientific ... activities, [], objectively, thoroughly, and expeditiously. ... On and before May 1, 2009, these NPS employees, all of whom "work[ed] with scientific ... information [] in performing their duties," knew about the camera research project, and partial results associated therewith, yet failed to notify the informant, DBOC, the NAS, and the NRC Committee." [pg. 35, Frost Report]

What changed between January 24 and 26, 2011 when Mr. Frost spoke individually with both me and Mr. Lunny, respectively, and March 22, 2011 when the public version of the Frost Report was released? What happened to the finding of scientific misconduct that Mr. Frost cited to me and Mr. Lunny on January 24 and 26, respectively?

While Mr. Frost found that five NPS officials and scientists all violated the NPS Code of Scientific and Scholarly Conduct, he defined this violation *not* as “*scientific misconduct*” but rather as “*administrative misconduct*,” and then failed to note this finding in either his introductory summary of his findings or in his final conclusions. Mr. Frost provided no federal document for a definition of “*administrative misconduct*” and subsequently admitted (in a phone call with me) that he invented the term.

Thus, the DOI inexplicably (and without precedent in any federal policy) redefined a violation of the NPS Code of Scientific Conduct as a finding of “*administrative misconduct*” rather than “*scientific misconduct*,” thereby allowing DOI to later assert that there was no scientific misconduct to the media, and most recently, to the Federal Court. The term “*administrative misconduct*” was invented by the Frost Report so that NPS and DOI could repeat over and over again that Gavin Frost found no “*scientific misconduct*.”

a. How Did the Frost Report Find Administrative Misconduct?

The Frost Report defined a violation of the Code of Scientific and Scholarly Conduct, now part of the DOI Scientific Integrity Policy (Chapter 3 of the Departmental Manual), as “*administrative misconduct*.” The Frost Report stated:

“The informant [Dr. Goodman] opined that failure to disclose the research data represented criminal misconduct in violation of 18 U.S.C. 1001, research misconduct or “scientific misconduct” as defined by Federal policies, and administrative misconduct in violation of an applicable NPS Code of Scientific and Scholarly Conduct.”

The 2008 DOI OIG Report defined a violation of the NPS Code of Scientific and Scholarly Conduct (which at the time did not exist) as scientific misconduct. Once the policy existed, the Solicitor’s office, in its 2011 Frost Report, then redefined it as “*administrative misconduct*.” The January 28, 2011 DOI Scientific Misconduct Policy defines a violation of the DOI Code of Scientific and Scholarly Conduct as scientific misconduct. The Frost Report did not and redefined this violation as administrative misconduct.

Thus, in defining the complaint, the Frost Report separated the complaint into three distinct categories, and derived definitions of misconduct for each one:

1) Violation of criminal code	= criminal misconduct
2) Violation of Fed. Research Misconduct Policy	= scientific misconduct
3) Violation of NPS Code of Scientific Conduct	= administrative misconduct

The third category is arbitrary since the DOI included both the second and third in Chapter 3 (Integrity of Scientific and Scholarly Activities) in the Departmental Manual. Chapter 3 does not give these two different definitions for violations. Violations of the policies in Chapter 3 should lead to a finding of scientific misconduct.

Nevertheless, the Frost Report found five NPS employees guilty of the third, violation of the NPS Code of Scientific Conduct. But in the “*Conclusion*” section of the Frost Report, it only mentioned the first two categories of the complaint in which it did not find a clear violation, and failed to mention the category in which it did find a clear violation.

“Conclusion. NPS employees erred but did not misstep in any manner defined as criminal misconduct or scientific misconduct for which the Agency could impose and successfully defend disciplinary actions. Accordingly, 001 may address the mistakes and restore public trust by concluding that severa1 NPS employees

could and should have handled research differently and by modifying the future behavior of NPS employees with education and corrective action as deemed appropriate."

The conclusions to the Frost Report failed to cite the finding that NPS employees violated the NPS Code of Scientific Conduct, and also failed to cite the finding of administrative misconduct (which should have been called scientific misconduct).

Given the omission of scientific misconduct findings in the redacted version of the Frost Report, the Department of the Interior issued a misleading press release on March 22, 2011 when the Frost Report was released, in which they declared that the Frost Report found "mistakes," but "no scientific misconduct." The DOI headline read:

"Interior Report Finds Mistakes Made, but No Scientific Misconduct at Point Reyes National Seashore"

The DOI press release stated:

"The review, done by the DOI Solicitor's Office, analyzes the factual record which supports conclusions that there was no criminal violation or scientific misconduct but that NPS, as an organization and through its employees, made mistakes which may have contributed to an erosion of public confidence. Specifically, several NPS employees mishandled research in the form of photographic images showing the activities of humans, birds, and harbor seals at upper Drakes Estero in PORE."

In a single press release, the Department of the Interior and the National Park Service undermined the White House Scientific Integrity Policy by declaring a finding of no scientific misconduct when in fact the Frost Report redefined the violation and called it administrative misconduct. The press release failed to mention that finding.

A day later, on March 23, 2011, Senator Dianne Feinstein, who followed this matter closely, read the Frost Report's finding that five NPS employees violated the NPS Code of Scientific and Scholarly Conduct, and wrote to Secretary Salazar:

"I write to express concern that the [NPS] and the [DOI] have once again failed to grasp the severity of recent misconduct at Point Reyes National Seashore. Rather than accepting the Frost Report's verdict of misconduct and taking decisive action, the Department of the Interior responded defensively by noting the absence of "criminal violation," admitting that "mistakes" were made, and declining to inform the public whether corrective action is taken."

She went on to state:

"The Frost Report details a "collective but troubling mindset" (p. 32) of misusing science for advocacy purposes. "This misconduct arose from incomplete and biased evaluation and from blurring the line between exploration and advocacy through research." (p. 35)"

In contrast, NPS Director Jarvis proclaimed that there was no finding of scientific misconduct. Director Jarvis responded to Senator Feinstein's comments on the radio show "Forum" with Michael Krasny on KQED Public Radio in San Francisco at 9 am on Thursday, April 7, 2011. Below is a transcript from the Jarvis radio interview with Michael Krasny:

Krasny: "... a committee of the National Academy of Sciences recently evaluated the work of the National Park Service scientists regarding oyster culturing in Drakes Bay. The National Academy of Sciences reported in their news release on

May 5, 2009 that the National Park Service scientists "selectively presented, over-interpreted, or misrepresented the available scientific information." When will the public be able to rely on the NPS scientists for accurate, unbiased information on scientific issues? Its a fair question because I think the listener is right about the way that report came back."

Jarvis: "Well, there have been a number of reports. The Academy report being one. And then most recently there has been another independent review by the Office of the Solicitor. And in none of those cases were there a finding of scientific misconduct. What there is at this point is a process -- an Environmental Impact Statement."

Krasny: "Excuse me, so Senator Feinstein was out of line by calling it misconduct?"

Jarvis: "Well, I'm not going to respond to that question, but I will say that there was no finding of scientific misconduct on any of those reports of National Park Service scientists. You can read the reports yourself. And there are actual statements of that regard from all of them -- there is no scientific misconduct. What there were that we have to deal with -- there is a lack of public confidence in the science of the National Park Service at Point Reyes."

Director Jarvis gave the radio audience a revisionist history of the findings of the various investigations into NPS science at Point Reyes. He said "*you can read the reports yourself.*" I have. The 2008 OIG Report did find that NPS knowingly misrepresented research (the current DOI definition of scientific misconduct), but did not find scientific misconduct because NPS and DOI lacked a scientific misconduct policy. The 2009 NAS Report explicitly did not consider misconduct. And the 2011 Frost Report redefined a violation of the NPS Code of Scientific and Scholarly Conduct and invented a new term to describe such a violation – "*administrative misconduct.*"

As an internal DOI report, this new definition allowed Director Jarvis to conclude "*no finding of scientific misconduct,*" but he could not have said "*no finding of misconduct.*" Frost found NPS employees guilty of misconduct, he just didn't call it scientific misconduct. The DOI and NPS interpretations of the Frost Report, and the Jarvis statement, were based on semantics, not science.

b. How Did the Frost Report Not Find Intent?

The crux of the misconduct complaint filed with the DOI OIG in 2010 (and subsequently referred to NPS and then the DOI Solicitor's office to conduct the investigation) was that NPS scientists had two years of photographs from secret cameras and detailed logs. The NPS analysis showed no DBOC disturbances of harbor seals, and yet they failed to provide these data to the NAS panel reviewing this issue – a NAS panel that had requested all data on oyster farm interactions with the harbor seals.

It is puzzling how DOI Field Solicitor Gavin Frost was unable to find evidence for intent to deceive the NAS panel, when the NAS panel requested all data, and the NPS scientists failed to disclose their largest dataset – the cameras, photos, logs, and conclusions – and the dataset that contradicted NPS claims to the NAS panel that they had evidence for DBOC disturbances.

The NAS study was requested in 2007, initiated in 2008, and the NAS Report was released on May 5, 2009. As the beginning of the NAS study, the NAS requested that

NPS give them all data concerning the oyster farm and Drakes Estero, and in particular all data concerning the harbor seals.

In the 2009 NAS Report, the NAS acknowledged the controversy concerning the NPS claims of DBOC disturbances of harbor seals, and concluded that resolving the controversy:

“... would require a data collection system that could be independently verified, such as time and date stamped photographs. This verification is especially important in circumstances where there is an indication of a source of disturbance that could lead to a regulatory action, as was the case with disturbances attributed to DBOC.”

We now know that on May 5, 2009 when the NAS report was released, NPS had, by then, two years of time and date stamped photographs from two secret cameras, and already knew that the photographs revealed no bona fide DBOC disturbances, but NPS said nothing to NAS or the public. The secret cameras and photographs, and detailed NPS logs of the photos, were not discovered until summer 2010.

NPS scientist Dr. Sarah Allen was sent the detailed log containing the analysis of the NPS photographs from the 2008 pupping season on June 6, 2008. The log was 16 pages long, and revealed no bona fide DBOC disturbances. Dr. Allen and her NPS colleagues never revealed the 2008 log or its conclusions, let alone even the existence of the cameras and photos, to the NAS panel. She remained silent on the issue after the NAS Report was released, even though they proposed precisely what had been operational for several years.

We didn't learn about the secret cameras until June 6, 2010, when I discovered a NPS document (the May 1, 2009 Briefing Statement), previously unreleased, that selectively presented a few NPS photos and, in the appendix, described the existence of a single camera taking time- and date-stamped photos.

On June 6, 2010, I discovered that the NPS had secretly photographed oyster farm boats, workers, and activity, and harbor seals, at Drakes Estero beginning on May 5, 2007. This was never disclosed to the NAS panel members involved in the May 5, 2009 NAS Report. Within a few months, based on disclosures from FOIA requests, it became clear that NPS had two hidden cameras (immediately taken down after the public revelation of their existence on June 7, 2010) for three and one half years taking time- and date-stamped digital photographs every minute from dawn to dusk during the harbor seal pupping season. NPS had 281,000 digital photos. They also had detailed logs of many of these photos, with a finding of no disturbances.

NPS studied the photos and prepared detailed logs for 2008 and 2009. Each instance in which an oyster boat or worker came or went was noted, along with determination of whether the harbor seals had been disturbed. The NPS logs of two years of minute-to-minute, day-to-day photos showed not a single bona fide disturbance of the harbor seals caused by the oyster farm. They did, however, show occasional disturbances by kayakers getting too close to the seals.

Thus, the NAS panel requested all NPS data, but the NPS never revealed the existence of the cameras, photos, or detailed logs. The conclusions from those logs contradicted the claims NPS had made to the NAS panel concerning DBOC disturbances of harbor seals.

Following the disclosure of the camera system and photos, I repeatedly tried to discuss this issue with NPS officials but they refused to meet or respond. At the urging of the DOI Inspector General's office, in November 2010, I filed a formal scientific misconduct

complaint with Secretary Salazar alleging that NPS failed to disclose the photos and logs (that contradicted their public claims of oyster farm disturbances) to the NAS panel.

I encourage you to read the section of the Frost Report on how NPS rationalized, and Frost accepted, why NPS did not disclose – or intended but failed to disclose – the cameras, photos, and logs to the NAS panel. That explanation is, on its face, ludicrous, and leads to questions about the independence of the Frost Report. Was this internal investigation truly independent? Was it an inappropriate venue for adjudicating the DOI Scientific Integrity Policy? The bottom line is that the NPS scientists and officials never informed and never provided the NAS with the photos and logs – highly relevant data, which, if disclosed, likely would have influenced the NAS Report.

The following is a brief synopsis of Frost’s reasoning for a finding of “*intended disclosure*.”

Concerning the allegation that NPS employees failed to disclose the secret cameras, more than 250,000 photos, and detailed logs to the NAS review panel, Mr. Frost asserted that NPS fulfilled “*intended disclosure to the OSB Director and the ad hoc NRC Committee [NAS panel] ...*” The NPS scientists told Mr. Frost that they sent the May 1, 2009 Briefing Statement to then-Regional Director Jon Jarvis on May 1, 2009, and that they intended that Mr. Jarvis would submit their May 1, 2009 Briefing Statement to Ocean Studies Board (OSB) Executive Director Dr. Roberts (who oversaw the NAS panel) on May 4, 2009, the day before the NAS report was officially released to the public. [Note: Mr. Jarvis and other in NPS received advanced copies of the NAS Report on May 1, 2009, and were briefed on the NAS Report on May 4, 2009.]

The fact that the NPS scientists never disclosed the cameras, photos, or logs at the September 4, 2008 NAS panel meeting were not reflected in Mr. Frost’s finding. Although the NPS scientists never disclosed the cameras, photos, or logs (during the more than 12-month review period of NPS harbor seal data by the NAS panel), this was not considered consequential to Frost.

The NPS scientists apparently convinced Mr. Frost that they ‘intended’ to have Mr. Jarvis hand over their May 1, 2009 Briefing Statement the day before the printed NAS report was made public. Dr. Allen had received the 16-page 2008 log on June 6, 2008 and did not disclose the content or conclusions of that log to the NAS panel in the summer of 2008, at the September 3, 2008 NAS panel meeting, or for the rest of 2008 and 2009, but Mr. Frost did not comment on the failure to disclose the logs.

Mr. Frost did not comment on the fact that the NPS May 1, 2009 Briefing Statement was not a thorough and open disclosure of the cameras, photos, and logs, but rather cited in two sentences in the appendix one not two cameras, for one not three years, with only a few and not the more than 250,000 photos, with no mention of the detailed logs, and with no mention of the conclusion of no disturbances of the harbor seals by DBOC. Mr. Frost did not tell us in his report if NPS officials or scientists ever prepared a submittal cover letter to go along with the document, as would be customary. Mr. Frost presented no evidence that the May 1, 2009 Briefing Statement was prepared for the NAS panel.

Mr. Frost apparently did not investigate the purpose and fate of the May 1, 2009 Briefing Statement once it arrived on Mr. Jarvis’ computer (keep in mind that Mr. Jarvis was about to be nominated as NPS Director, and the May 1, 2009 Briefing Statement reads as if it is intended to blunt my criticisms of NPS science under Mr. Jarvis, not as a submittal to the NAS). Regardless, Mr. Frost accepted the NPS explanation of “*intended disclosure*” to justify submitting that document to the NAS panel only after the panel had held its meetings, written its report, extensively reviewed its report, finalized, and printed the

report. Mr. Frost accepted that the scientists, via Regional Director Jarvis, intended to disclose the cameras, photos, and logs to the NAS panel, via their May 1, 2009 Briefing Statement, on the eve of the public release of the NAS report (apparently there is no written confirmation of this intent).

Mr. Frost presented no evidence to support the notion that the NPS scientists intended to have Mr. Jarvis submit the Briefing Statement to Dr. Roberts (Director, Ocean Studies Board, NAS) on May 4, 2009. No submittal letter was provided. Mr. Frost simply accepted their word that they asked Mr. Jarvis to do so.

The explanation in the Frost Report raises some interesting questions. Does OSTP believe that “*intended disclosure*” constitutes acceptable or appropriate *disclosure*? Does OSTP consider the NPS explanation to Mr. Frost to be credible? Does OSTP agree or disagree with Mr. Frost that this constitutes appropriate disclosure? Since the NPS scientists never informed the NAS panel members about the cameras, photos, or logs at their September 4, 2008 meeting, or during their lengthy review process, how does this not constitute a failure to disclose?

Why is this important? Had Mr. Frost found that the NPS scientists had not intended to disclose the cameras, photos, logs, and conclusions to the NAS panel members, then he would have been compelled to reach a finding of scientific misconduct. The camera, photos, and logs invalidated a key NPS claim (i.e., that the oyster farm disturbed harbor seals) that the NAS panel was tasked with assessing. This was the major part of my complaint. Mr. Frost conveniently found that the “*intended disclosure*” of the cameras, photos, logs, and conclusions (albeit in a document that disclosed very little of that, and only in the appendix) on the eve of the release of the NAS Report (with no evidence of a submittal letter, and no evidence of their intent in any of their emails) was sufficient to convince him that the “*preponderance of evidence*” did not show an intentional misrepresentation to the NAS panel.

Does OSTP consider this a reasonable interpretation of the Federal Policy on Research Misconduct?

How does the DOI OIG consider the Frost Report? On November 9, 2010, Deputy Assistant Inspector General Scott Culver wrote to me that the DOI OIG had asked NPS to investigate these allegations and would “*evaluate their [NPS] 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.

Although the DOI OIG told me they agreed and found the Frost Report inadequate, two years later, in spite of repeated requests for further involvement, no additional action has been taken by the OIG. On September 14, 2011, I wrote to John Dupuy, Assistant Inspector General for Investigations (DOI OIG), and asked ten questions concerning the Frost Report. Question 6 stated:

“(6) *Intended disclosure to NAS.* Do you accept Gavin Frost’s description that the NPS scientists were not guilty of scientific misconduct because they had intended to disclose the cameras, photos, and logs to the NAS panel during it’s 2008-2009 investigation (what he called “*intended disclosure*”) in early May 2009 on the eve of the public release of their published report? Did the Frost Report convince you that the purpose of the May 1, 2009 Briefing Statement sent to then-Regional Director Jon Jarvis was for to give to the Executive Director of the Ocean Studies Board on the day before the public release of the NAS report? Does the May 1, 2009 document represent adequate disclosure of the cameras,

photos, and logs? Is there sufficient evidence that the NPS scientists intended its disclosure to the NAS panel? Even if correct, is intended disclosure the day before the public release of a printed report -- a report that represented over one year of review by the NAS panel -- constitute grounds to dismiss allegations of failure to disclose? Do you concur with Gavin Frost's description and interpretation of the disclosure issue?"

Mr. Dupuy never responded. On March 19, 2012, I wrote to Mr. Dupuy again, reminded him and supplied him with a copy of my September 14, 2011 letter, and once again asked him to answer the ten questions, determine if the Frost Report was adequate, and if not, determine what further action by his office appeared warranted. Again, Mr. Dupuy never responded. No one in the DOI OIG has ever responded.

According to the OIG FOIA officer, the November 2010 file remains open and unresolved as of February 2013.

c. How Did the Frost Report Describe the "Informant"?

There are a couple of sentences in the Frost Report that are conspicuous in their harsh description of me as the "*informant*," and that are quoted by NPS supporters every time new misconduct is uncovered and a new complaint is filed concerning NPS scientific misconduct.

The Frost Report is quoted to assert that I used certain forums to "*launch an ... attack*" on NPS scientists, to make "*verbal and written assaults on NPS scientists and officials*," and that I "*rejected the possibility of honest but different scientific opinions*." As the late Senator Daniel Patrick Moynihan said, and I have often repeated, "*everyone is entitled to his own opinion, but not his own facts*." The issue is not about "*honest but different*" interpretations of a set of facts, but rather about intentional misrepresentations of the facts.

The Frost Report, publicly released by DOI in March 2011, made a number of uncomplimentary statements about me. Are those statements factually correct? Did Field Solicitor Gavin Frost have a factual basis for them? Did Mr. Frost actually write them? Were those statements contained in the initial version of his report submitted to the DOI Solicitor's Office in early February 2011?

One thing is certain. The critical statements in the Frost Report are contradicted by what Gavin Frost told me when he interviewed me on December 15, 2010, and they are contradicted by what Gavin Frost subsequently told me in several phone conversations, in which he has apologized for those statements. Understanding the statements in the Frost Report requires some historical context.

A pattern has emerged over the past three years, and OSTP should anticipate this behavior by NPS/DOI officials and NPS supporters concerning this complaint.

A few days or weeks *after* I file any complaint concerning NPS scientific misconduct:

- 1) Ad hominem attacks are published in newspapers either from NPS officials or NPS supporters trying to tarnish my reputation;
- 2) A document is filed with the same agency attacking my credibility (since March 2011, quoting from a few sentences in the Frost Report), and denying the allegations, typically by confusing or misleading the reviewers.

NPS Superintendent Cicely Muldoon has a pattern in the local newspapers of linking me to the "*politics of personal destruction*" whenever I speak or write about

allegations of scientific misconduct concerning NPS. Ms. Muldoon's words have also been used by a number of NPS supporters in an attempt to convince the community that my complaints are personal, rather than scientific. This has happened over and over again.

For example, I discovered the existence of NPS secret cameras on June 6, 2010 (which is what ultimately led to the Frost Report). Throughout the summer, NPS officials, including Superintendent Muldoon, refused to discuss with me the cameras and photos, and their implications for the NPS claims that DBOC is disturbing the harbor seals.

In September 2010, I was invited to give a keynote address to the California Council on Science and Technology (CCST, of which I am an elected member) on October 18, 2010. My talk was entitled:

"The Federal Scientific Integrity Policy Doesn't Work: A Case Study of Government Misuse and Abuse of Science."

The morning after I gave my talk, I sent copies of my slides, and an audio recording of my talk, to Ms. Muldoon and many other officials in NPS, DOI, and the DOI OIG. Within a few days, my talk was posted on YouTube where it can still be found at:

<http://www.youtube.com/watch?v=O4lmdD4praE>

Three days later, on October 21, 2010, in The West Marin Citizen newspapers, Superintendent Muldoon published a letter to the editor in which she wrote:

"I can only hope Dr. Goodman's presentation does not include an attack on good people, who have born repeated attacks on their personal credibility with quiet dignity."

"The politics of personal destruction is not worth of this passionate, informed, and engaged community, and it is my clear sense that the community is weary of it."

To everyone reading the newspaper, the meaning of Ms. Muldoon's comments were clear: she was accusing me – once again – of the "politics of personal destruction." A few days after publishing her letter in The West Marin Citizen, Ms. Muldoon admitted that she had not listened to my talk and had not looked at the slides, even though they had been sent to her. The absence of being directly informed did not prevent the Superintendent from making her accusatory comments in the newspaper.

On October 22, 2010, I wrote to NPS Director Jarvis (and copied Ms. Muldoon, NPS SIO Dr. Machlis, Interior science advisor Dr. McNutt, and others), and stated:

"From the vantage point of West Marin, this looks like business as usual – deflect the message, attack the messenger, and make unsubstantiated claims."

I asked Mr. Jarvis to ask NPS officials to stop repeating these code words every time I filed a complaint. He did not respond.

One person ultimately did respond: DOI Field Solicitor Gavin Frost. When he first telephoned me in late November to arrange to interview me, he said he recognized my voice, because he had just watched my hour-long presentation on YouTube. He said it was excellent. He also told me that he had heard criticisms of me pertaining to my personal attacks on NPS scientists (he did not identify from whom), and offered that he specifically watched my YouTube video to see for himself, and he found my presentation scholarly and focused on facts and policy.

When Mr. Frost came to interview me in West Marin on December 15, 2010, I asked him whether he found my CCST talk, or my complaint filed with Secretary Salazar, to

contain any gratuitous personal attacks, and whether it deserved to be labeled by Ms. Muldoon as the “*politics of personal destruction.*” Frost gave a clear answer, one that was recorded by him and is available as either a digital recording or transcript from the Solicitor’s office. Frost told me that he found my talk scholarly and scientific, that neither my talk nor my complaint contained any gratuitous personal attacks, and that he found the statement by Ms. Muldoon to be inappropriate.

Mr. Frost repeated to me during his investigation, and has told me several times since his report was released, that he found me to be of high integrity, and my complaint to be scholarly and scientific. When I asked him about the couple of sentences in his report that are quite harsh criticisms about me, asserting just the opposite (namely, the “*politics of personal destruction*”), he apologized. He told me he took responsibility for those words, and he was sorry about them, since his name is on the report, but conspicuous, he never said: “Corey, I wrote those words.”

Let’s examine one example. On page 8 of the Frost Report, it states:

However, the Olema meeting did provide the informant [Dr. Corey Goodman] a forum to launch an initial attack on S1 [Dr. Sarah Allen], whom the informant accused of misrepresenting science in the “Sheltered Wilderness” document. Criticizing S1’s scholarly analysis and calling S1’s actions “scientific misconduct,” the informant convinced participants at the Olema meeting to involve independent science experts for the purpose of examining data, including the “Sheltered Wilderness” document, and the effects of shellfish mariculture on the Drakes Estero ecosystem and harbor seal populations found therein.

That is an inaccurate description of Senator Feinstein’s Olema meeting on July 21, 2007. I asked Mr. Frost who told him that I launched an attack on Dr. Allen at the Olema meeting. He told me the information came from Dr. Allen. I asked him if he knew that Dr. Allen did not attend the Olema meeting. He answered that he did not. I asked him why he had not asked me about this accusation, since his mission was intended, according to NPS, to be “*fact finding.*” He had no answer.

What in fact happened at Olema? Senator Feinstein was sitting across the table from NPS Director Mary Bomar. I was sitting a few seats to the right of the Senator, and directly across the table from then-Regional Director Jon Jarvis and PRNS Superintendent Don Neubacher. There were about 20 people in the room, most gathered along a long, thin dining table. Senator Feinstein asked me to describe my evaluation of the NPS science. I did so, sticking to the facts, and with no personal attacks. Senator Feinstein asked me a series of questions. Mr. Neubacher remained quiet. Mr. Jarvis did most of the talking, trying to blunt my criticisms.

Senator Feinstein and NPS Director Bomar asked Mr. Jarvis to work with me (and Tom Moore, California Department of Fish & Game) to establish an outside, independent review of the NPS science in the NPS Drakes Estero Report (*Drakes Estero, A Sheltered Wilderness Estuary*). [Their directive that day was the origin of the May 5, 2009 NAS Report.] Mr. Jarvis responded that given the issues with some of the work done by Dr. Sarah Allen, NPS would request an independent review of the science done by the senior scientist. I quickly responded that he should not investigate Dr. Allen, that the “buck stopped at the top”, and that he should investigate Superintendent Neubacher for the false science (I did not know, at the time, that Regional Director Jarvis was involved, and would become more deeply involved).

No attack was “*launched*” against Dr. Allen or anyone else. NPS science, as presented in published reports, was strongly criticized. It was Mr. Jarvis who suggested that NPS

investigate Dr. Allen. Dr. Allen did not attend the meeting, and was not present for these conversations. She nevertheless, according to Mr. Frost, reported what she considered to be inappropriate conduct on my part, under oath, to Mr. Frost, concerning a meeting for which she had no first-hand knowledge. At Olema, Mr. Jarvis was quick to assign the blame to Dr. Allen for the false science.

Could Mr. Frost have verified what went on rather than simply repeating what Dr. Allen told him? Yes. First, he could have interviewed others present at the meeting, including the Senator, Mr. Lunny, and Marine County Supervisor Steve Kinsey. Moreover, he could have asked me. I would have shared with him an email I sent to Mr. Jarvis at 9:59 am the following morning (July 22, 2007). At the end of my summary of the action items from the Olema meeting, I wrote:

“One final note so that you are not surprised by my actions. Although I am very pleased by what is outlined above, I will continue to push, and I hope that you will support my efforts, for an investigation of what I believe has been intentional scientific fraud by the PRNS over the past year. After the lunch, I gave Molly Ross a copy of a powerpoint on the case for science fraud (see enclosure), and I asked her to make sure that the Solicitor’s office properly investigated this issue. I realize this is a serious claim, and I do not make it lightly, but this is what I have concluded, and if I am correct, then this is a serious allegation against the Superintendent. We need to resolve just how we got here – why the science was so misrepresented, misused, and misquoted for over a year – before we can clear the air and move forward. I heard you say that you need to see if the senior staff scientist did something wrong. You cannot stop there. If she misrepresented the science, surely you must investigate if the orders came from the top. The buck stops with the Superintendent. The NPS needs to investigate if Sarah Allen was simply following orders.”

Mr. Jarvis responded to my email, but only to unrelated matters. He never disputed my contention that at the Olema meeting, he proposed investigating Dr. Allen, whereas I suggested he needed to investigate the Superintendent.

In summary, personal attacks on Dr. Allen did not occur. Moreover, there is no evidence that I launched a personal attack on Dr. Allen at Senator Feinstein’s Olema meeting. My review of the science was scholarly and based on the available record – reports, published articles, and other forms of information at the time. The Senator personally thanked me after the Olema meeting for my thoughtful presentation. Mr. Frost, during his investigation, never addressed these issues and did not ask about these matters.

My analyses have focused on NPS science, and on the cultural problem within NPS. In my April 24, 2012 filing with the DOI OIG, I wrote:

“This is not a problem that can be solved by an isolated personnel disciplinary action. This is not a problem that can be solved by a quick fix or scapegoat. The bias – and willingness – to misuse science for a predetermined agenda is pervasive in this DEIS, a document that was seen, touched, and influenced by many people at NPS. This bias also represents a cultural problem that starts with top leaders and managers and spreads throughout the organization. It represents a crisis of leadership.”

Shortly after I submitted my complaint on April 24, 2012, PRNS Superintendent Muldoon published a statement in the Point Reyes Light newspaper, once again

accusing me of the “politics of personal destruction.” On May 21, 2012, I wrote to NPS Director Jarvis:

In October 2010 and again in April 2012, I wrote to you with the same complaint that Superintendent Muldoon was using language in public to describe an independent scientist that was unbecoming of the National Park Service, and in conflict with federal misconduct policies. Your lack of response in 2010 indicated your acceptance of Muldoon’s language, which may have encouraged her to use the same language again in 2012. Each time Superintendent Muldoon publicly accused me of the “politics of personal destruction.”

In 2010, Muldoon admitted she had neither listened to my CCST talk nor watched it on YouTube when she wrote her statement. In 2012, immediately after I filed my complaint with the Acting Inspector General, Muldoon made the same accusation to the media as if reading from a prepared statement. Is this language consistent with your policies and principles? Is it consistent with the Secretary’s policies and principles?

In 2010 and again in 2012, I asked you -- as Director -- to exercise your authority to ask Muldoon to retract her comments, apologize for them, and stop using such language, but both times, you remained silent. Now you say you are waiting for a formal referral from the OIG to respond to my complaint. Your silence indicates that you condone the Superintendent’s language.

Is this the leadership the White House expects from the NPS Director in upholding their scientific misconduct policy? You need not wait for a formal referral from the OIG to assert your leadership and stop inappropriate public language emanating from your subordinates.

Mr. Jarvis never responded. I never heard from anyone concerning this issue.

11. The Marine Mammal Commission Report from November 2011.

Dr. Tim Ragen, Executive Director, MMC, told Mr. Lunny (owner, DBOC), Mr. Weiman (DBOC consultant), and me on many occasions that he would not consider the issue of scientific misconduct, and would not even consider the topics of NPS misrepresentation, falsification, or fabrication of data, , notwithstanding his obligation by regulation (Federal Policy on Research Misconduct). He told us this explicitly:

- Before and during the February 2010 MMC panel meeting,
- Before and during the June 2010 MMC meeting to consider NPS disturbance records,
- During the summer of 2010 after the discovery of the NPS secret cameras, 280,000 photographs, and NPS detailed logs, and
- During the final six months of 2011 prior to the release of his MMC Report.

Moreover, as described in the current complaint, Dr. Ragen’s MMC Report was not independent, but rather he was biased and conflicted, and gave NPS inappropriate access and veto power (see complaint filed on November 7, 2012 with Department of Commerce Inspector General Todd Zinser, attached here).

12. Allegations of Scientific Misconduct Submitted to the DOC OIG in November 2012.

On November 7, 2012, I filed a misconduct complaint with the Department of Commerce OIG concerning MMC Executive Director Dr. Tim Ragen (attached). 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 Drakes Estero. The complaint stated:

The complaint presented below alleges that Dr. Ragen violated MMC policies, rules, and guidelines, the Federal Freedom of Information Act (FOIA), and the MMC Scientific Integrity Policy. This complaint alleges:

- *Publicly Dr. Ragen claimed to be transparent, inclusive, and to provide equal access, and to be independent, unbiased, and without conflict, but*
- *Privately Dr. Ragen was secretive, exclusive, dependent upon NPS, biased, and conflicted, and gave NPS inappropriate access, and veto power including*
 - *Access to documents not provided to other parties,*
 - *Ability to critique work of other parties without disclosure or comment, and*
 - *Power to not respond to questions and not participate in open discussions.*

As a result of Dr. Ragen's inappropriate actions, the MMC Report was:

- *Not an independent review of NPS science as claimed by MMC, and*
- *Not a legitimate independent peer review of the draft EIS as claimed by NPS.*

Dr. Ragen deceived the public, the press, elected officials, and all parties involved by privately allowing NPS to review itself, while publicly claiming that the MMC Report represented an independent review of the NPS science.

Dr. Ragen espoused the principles of transparency, inclusiveness, and equal access. He wrote of open discussion, open dialogue, and open exchange. Dr. Ragen failed on every one of those principles. He failed the MMC. He failed our community.

Dr. Ragen failed to disclose the inappropriate access relationship granted to NPS. Dr. Ragen was not transparent. Dr. Ragen was exclusive, not inclusive. Dr. Ragen granted special access, not equal access. Dr. Ragen went to great lengths not to disclose his private bias – apparently breaking FOIA regulations by withholding key communications.

Dr. Ragen allowed the NPS to assert that the MMC Report served as an independent peer review of the NPS harbor seal section of the DEIS when it was anything but independent. That assertion allowed NPS to omit the harbor seal section of the DEIS from the Atkins Peer Review Report, thereby eliminating the possibility that Atkins scientists would find fault with that section. By his actions, Dr. Ragen empowered the NPS to secretly review itself, and to deceive the public.

In summary, Dr. Ragen's conduct was inappropriate and unethical. NPS employees were equally inappropriate, complicit, and active participants throughout a MMC

review process that was anything but transparent, inclusive, and independent. Dr. Ragen established a public process with a veneer of fairness, balance, and independence, while his private activities subordinated that independence to the very entity being investigated and reviewed – the National Park Service.

I filed this complaint with the DOC OIG because the MMC Scientific Integrity Policy, filed with OSTP, claimed to have a memorandum of understanding with the DOC OIG and stated that complaints concerning the Executive Director should be filed with the DOC OIG.

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, and they suggested OSTP as the only place to take the complaint concerning scientific misconduct at MMC. That complaint is included here.

13. Allegations of Scientific Misconduct Submitted to the USGS SIO in December 2012.

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 very familiar with the USGS Report. She also took no responsibility for the misrepresentation of the USGS Report in the NPS FEIS. Rather, she was concerned about the possibility that her own scientists had misrepresented the Stewart Report in the USGS Report.

I described for 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. 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. I told Dr. McNutt that I had additional information based upon several email exchanges, and seven pages of notes from a lengthy telephone discussion, with USGS Dr. Lellis, the senior author on the USGS Report.

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 over 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.

What the USGS is doing in response to this complaint is unknown. 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, it is essential that OSTP handle the investigation of the misrepresentation and falsification in the USGS Report, and the sequential misrepresentation and falsification in the NPS FEIS, both concerning the original finding of "no evidence" 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 USGS SIO 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.

Please get it touch with me to schedule an interview. I look forward to talking with you."

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 conducting an investigation or not, 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.

On December 21, 2012, the lawyers for Drakes Bay Oyster Company filed a declaration and report authored by me with U.S. District Court Judge Rogers concerning the pair of serial misrepresentations concerning so-called disturbances of harbor seals by oyster boats (provided here as part of the documentation for allegation #1 of this complaint. I described how the NPS FEIS misrepresented the USGS Report, and how the USGS Report misrepresented the Stewart Report, from Hubbs SeaWorld Research Institute harbor seal behavior expert Dr. Brent Stewart. I shared both the declaration and the report with USGS Director Dr. McNutt on December 23, 2012.

The Department of Interior, in their filings in Federal Court, did not address the issues raised in my statement or attempt to rebut them. No rebuttal was filed. This is a striking feature of the court proceedings thus far: Interior has not attempted to formally explain or deny these allegations of misconduct. However, on January 25, 2013, Department of Justice (DOJ) attorney Stephen Macfarlane, on behalf of DOI, did comment on my allegations in his statements to Judge Rogers.

In the hearing on the oyster farm motion for a preliminary junction, Mr. Ryan Waterman (DBOC counsel), concerning the allegations of scientific misconduct, told Judge Rogers:

Unrebutted in our papers, is our claim – actually our proof – that the Final EIS alleges that there were two harbor seal disturbances caused by Drakes Bay Oyster Company boats. This came as a huge surprise to us. And when we looked at the National Park Service consultant, as expert in harbor seal activities, Dr. Brent Stewart, his report concluded that there were no disturbances. We went on one side from no disturbances translated into a Final EIS with two disturbances. That's just the tip of the iceberg. Your Honor, we've also identified a number of other places where these types of scientific misconduct has occurred. When we talk about the public interest, the public has an interest in decision being made by the government on good science.

Mr. Macfarlane, on behalf of DOI, responded:

Mr. Waterman, I think, is incorrectly reading the Final Environmental Impact Statement [FEIS]. I would invite your Honor to go and read what that statement actually says about the evidence attributed to these photographs and the impact on harbor seals from boating operations in Drakes Estero. It doesn't say what he says it says.

At the end of the day, I think the scientific misconduct charge has been thrown about rather recklessly. We strongly disagree with it.

So when push comes to shove and we are talking about scientific matters and technical matters, I think basically this boils down to a disagreement among experts. And if we get to the point in this litigation where we have an opportunity to address that, I think we will be able to establish that that's not something that the court should weigh in on."

Thus, the DOI claims "*this boils down to a disagreement among experts*" (implying a disagreement about the interpretation of data). This boils down to a repeated pattern of misrepresentations of facts – not different interpretations of facts.

The DOI counsel told Judge Rogers that the FEIS doesn't say what I say it says about the evidence of disturbances of harbor seals by the oyster farm. This was a clear misrepresentation of the facts. The NPS FEIS misrepresented the USGS Report, and the USGS Report misrepresented the Stewart Report. On this, there is no ambiguity. This is not a matter of interpretation. Dr. Brent Stewart found "*no evidence of disturbance*" by the oyster farm.

To Judge Rogers, DOI asserted that these accusations of "*scientific misconduct*" lack merit, but they provided the court with no evidence in a written rebuttal. The DOI counsel stated: "*... that's not something that the court should weigh in on.*"

14. Allegations of Scientific Misconduct Submitted to the DOI OIG in April 2012.

On April 24, 2012, I filed a 270-page complaint with DOI Acting Inspector General Mary Kendall involving allegations of false representations of data, concealment of data, and deception involving unnamed NPS and VHB employees who wrote, revised, and reviewed the NPS Draft Environmental Impact Statement (DEIS) on Drakes Estero. The submittal was focused on six allegations.

I wrote:

"The body of evidence presently available indicates that unnamed NPS and VHB employees who wrote, revised, reviewed, and supervised the NPS DEIS:

- (1) Failed to follow NPS Management Policies 2006 and Director's Order #47.*
- (2) Made false representations of key acoustic data in Chapter 3 of the DEIS.*
- (3) Made false representations of key acoustic data in Chapter 4 of the DEIS.*
- (4) Concealed key acoustic data in Chapters 3 and 4 that contradicted DEIS.*
- (5) Drove incorrect findings of major impacts in Chapter 2 of the DEIS.*
- (6) Knowingly deceived the public and peer-reviewers in the DEIS.*

Compounding these allegations, over the past few weeks, my analysis of the NPS soundscape data was hindered by NPS employees, including Dr. Machlis, who did not adhere to the DOI Code of Scientific and Scholarly Conduct by hindering and restricting access to already published and highly relevant acoustic data.

Each false representation of data in the DEIS supports the contention that the DEIS has a bias – a bias by writers intent on finding major impacts of environmental harm by Drakes Bay Oyster Company.

Data and metrics were distorted, invented, falsely represented, overestimated, underestimated, and exaggerated, and the real data concealed, all with the result of showing that DBOC boats and equipment could be heard for miles, when in reality they could not.

Tables and legends were changed from one version of the DEIS to the next not with the normal result of improving clarity and consistency, but rather with the end result of further deceiving the reader. In so doing, the DEIS became more confusing and internally inconsistent.

It is difficult to examine this record of false representations and suppression of data without coming to the conclusion that these actions were knowingly undertaken. The public and peer-reviewers were knowingly deceived – that deception appears to have been intentional.”

The DOI OIG promised me that it would complete its investigation and make its results public prior to NPS’s publication of a Final Environmental Impact Statement (FEIS). This did not happen. DOI OIG agent Haecker made the same representation to Kevin Lunny (DBOC). The OIG also promised to give Kevin Lunny and me an opportunity to rebut factual assertions made by NPS in response to the misconduct complaint. This did not happen.

The FEIS was issued by NPS on November 20, 2012. Nearly three months later, the OIG released their report.

On February 7, 2013, the DOI OIG released a 42-page report entitled: “Investigative Report on Drakes Bay Oyster Company Environmental Impact Statement” (the “IG report”). The IG report dismissed all of my allegations of NPS misconduct and wrote:

“We found no evidence, documents, DEIS revisions, or witnesses that supported the complainant’s allegations.”

How the IG came to this erroneous conclusion is a troubling story of misconduct on the part of a misconduct investigation, as described below and in detail in appendix 4.

On February 21, 2013, the U.S. House of Representatives Committee on Natural Resources, Office of Oversight and Investigations, released a 72-page report entitled: “Holding Interior Watchdog Accountable” (the “House CNR report”) that details mismanagement by Deputy Inspector General Kendall while overseeing the IG.

The House CNR report found that the DOI OIG is not sufficiently independent and does not hold Interior accountable. In an accompanying press release on the House CNR report, the committee staff wrote:

“These include: not pursuing investigations involving political appointees or Administration priorities; informing senior Department officials of problems without conducting formal investigations and not issuing reports to Congress and the public; not adequately documenting the management of IG investigations and operations; serving in an appointed policy role in conflict with the IG’s

investigative duties; preventing an investigator from seeking information from a White House official; and providing inaccurate and misleading information to Congress."

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.

I do not know what happened during the investigative, writing, and draft review stages of the current IG report. But the final product – the redacted public version – has many similarities to the questionable reports reviewed by the House Committee on Natural Resources.

The 42-page IG report is complex and convoluted, contradicts itself at times, and does not address the issues as set forth in my April 24, 2012 complaint. I presented six allegations to the IG, and subdivided his 270-page submittal into those same six parts, with each further subdivided into four or five subheadings.

The structure and logic of my complaint was clear, yet nowhere in the IG report are those six allegations quoted and addressed.

How did the IG reframe my complaint? Rather than restate my six allegations, in the IG report Synopsis, the IG misrepresented my complaint as nine allegations, and in the body of the report as ten allegations. Some of my six allegations were never properly addressed, while allegations I never made – straw man arguments – are discussed and dismissed.

I am quoted saying things I never said. NPS and VHB (the outside contractor for the EIS) staff are interviewed and their statements accepted by the IG, even when they are inconsistent with other NPS and VHB statements, and contradicted by documents and email in the possession of the IG.

The overview below represents a preliminary analysis of the IG report. The analysis of a number of key topics is still in progress. Nevertheless, some conclusions can be drawn. This preliminary analysis of the IG report leads to the follow conclusions. The DOI OIG:

- 1) Did not conduct a proper investigation, showed bias, and compromised the independence of the IG process;
- 2) Altered Dr. Goodman's complaint by a distorted restatement of his allegations;
- 3) Failed to respond to selected allegations in Dr. Goodman's complaint;
- 4) Created straw-man allegations that Dr. Goodman never made;
- 5) Cherry-picked law and policy (ignored the mandatory NPS Management Policies 2006 – the basis of Dr. Goodman's allegation #1) and in violation of these policies, accepted the use of proxies in lieu of easily-obtained direct data;
- 6) Derived numbers from these inappropriate proxies that common sense and direct experience (of NPS and OIG) shows are exaggerated, and NPS "best available science" shows clearly are not;
- 7) Accepted explanations from NPS and VHB staff, and key outside consultants, that are contradicted by documents and emails in the possession of the IG;
- 8) Arrived at conclusions that were contradicted by testimony and documents cited elsewhere in the IG report;

- 9) Cherry-picked quotations and citations from key documents and falsely attributed statements to Dr. Goodman that are not contained in his 270-page submittal; and
- 10) Made serious errors of fact because the IG did not properly fact-check its report, something it promised to do with Dr. Goodman and Kevin Lunny but did not.

In so doing, the IG erroneously dismissed all of my allegations, even though documents and emails in the IG's possession, and statements made by NPS and VHB staff during interviews with the IG, clearly support the allegations.

Thus, this IG report became the latest chapter in a history of cover-up investigations that have exonerated NPS – and Director Jon Jarvis – from serious allegations of scientific misconduct involving Drakes Bay Oyster Company (e.g., the Frost Report by DOI Field Solicitor Gavin Frost).

I submitted a 270-page document alleging NPS misconduct to Acting Inspector General Mary Kendall on April 24, 2012. The allegations of scientific misconduct in this case seemed so clear-cut that Senator Dianne Feinstein wrote to Interior Secretary Ken Salazar about them a few weeks earlier on March 29, 2012. Senator Feinstein wrote:

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

“I am frankly stunned that after all the controversy over past abuse of science on this issue, Park Service employees would feel emboldened to once again fabricate the science in building a case against the oyster farm. I can only attribute this conduct to an unwavering bias against the oyster farm and historic ranches.”

“The Park Service has falsified and misrepresented data, hidden science and even promoted employees who knew about the falsehoods, all in an effort to advance a predetermined outcome against the oyster farm. Using 17-year-old data from New Jersey jet skis as documentation of noise from oyster boat engines in the estuary is incomprehensible. It is my belief that the case against Drakes Bay Oyster Company is deceptive and potentially fraudulent.”

In dismissing every one of my allegations of misconduct, the DOI OIG came to the opposite conclusion as did Senator Feinstein and accepted every explanation, no matter how far-fetched, provided by NPS and VHB staff.

Moreover, the IG did not find the misrepresentations of data to be deceptive and potentially fraudulent. In fact, the IG accepted everything said to them by the peer-reviewer of the DEIS (Dr. Christopher Clark, Cornell University), and thus dismissed the allegation of deception, even though the IG was in possession of documents and emails written by Dr. Clark that explicitly contradicted his statements – documents and emails the IG quoted elsewhere in their report.

What follows below and in appendix 4 is a preliminary (and admittedly incomplete) analysis of the IG report. Many additional issues remain under review.

Below is a brief timeline of events, followed by a brief overview of the findings of this analysis.

- September 2011: The NPS released its Draft Environmental Impact Statement (DEIS) for the Drakes Bay Oyster Company (DBOC) permit extension. The NPS claimed a finding of two major adverse impacts: soundscape and wilderness.
- December 2011: Kevin Lunny (owner, DBOC) submitted an independent soundscape analysis by an independent acoustic scientist at Environ Corporation that contradicted the NPS data in the DEIS – the NPS soundscape analysis that led to a finding of major adverse impact.
- December 2011: Congress (Senate FY 2012 Consolidated Appropriations Act) questioned the validity of the NPS science in the DEIS and directed DOI to have the National Academy of Sciences (NAS) conduct an independent peer review of the DEIS science.
- March 2012: The DOI released the previously undisclosed Atkins report, a peer review of some but not all of the NPS science in the DEIS. Dr. Christopher Clark from Cornell University reviewed the soundscape section of the DEIS.
- March 2012: Based upon the soundscape analyses in the DEIS, Environ report, and Dr. Clark’s peer review of the DEIS, Dr. Goodman investigated the soundscape data, focusing in particular on its sources and calculations. He discovered that NPS never made measurements of DBOC noise-generators (as mandated by NPS Management Policies 2006), but rather used (without disclosing) data from other equipment at other locations (e.g., using a Jet Ski off the New Jersey shore in 1995 to misrepresent the DBOC oyster skiff in Drakes Estero in 2011, and a cement truck with a large diesel engine to misrepresent the DBOC plastic oyster tumbler with a much smaller electric engine). Analysis of the Atkins report revealed that Dr. Clark was deceived, and exposed NPS misconduct. In a telephone conversation with Dr. Goodman, Dr. Clark admitted that he was deceived and believed the data came from DBOC equipment.
- April 2012: Dr. Goodman submitted 270-page misconduct complaint to Acting Inspector General Mary Kendall with six major allegations against NPS and VHB staff who prepared the NPS DEIS.
- May 2012: IG special agents Vince Haecker and Trey DeLaPena interviewed Dr. Goodman for 8 hours. They had numerous phone calls and email exchanges. Mr. Haecker told Dr. Goodman the IG report would be released by September prior to NPS release of the Final EIS (FEIS). The IG report was released in February 2013, six months later than planned.
- In May 2012: The OIG agents promised Dr. Goodman to fact-check NPS responses. In large part they did not. Between October and December, repeated requests were submitted to the OIG to allow Dr. Goodman to fact-check NPS and other responses. The OIG declined to allow Dr. Goodman to fact-check the responses.
- June 2012 to February 2013: OIG had little communication with Dr. Goodman; a few phone calls, no meetings, no fact-checking of the specific allegations

Below is a brief overview of the findings of this preliminary analysis:

- The February 7, 2013 IG report dismissed Dr. Goodman's allegations, claiming they found no evidence, documents, or witnesses that supported his complaint.
- The IG erroneously dismissed the allegations because it failed to conduct an unbiased, independent, and honest investigation.
- The IG altered the six major allegations in Dr. Goodman's submittal, ignoring some allegations, and inserting others that Dr. Goodman never made. The IG did not respond to each of Dr. Goodman's allegations, but rather in imposed straw-man arguments. The IG report is guilty of being a bait-and-switch.
- A whole section is introduced, for example, concerning Dr. Goodman's so-called allegations that NPS staff who worked on the DEIS had a conflict of interest, when Dr. Goodman never made this allegation. On the other hand, Dr. Goodman did allege the DOI and NPS Scientific Integrity Officers (SIO's) were conflicted and should not be involved in the investigation, but the IG failed to cite this issue. There is concern that the SIO's might have participated in the IG report.
- Statements by NPS staff, other government employees, and peer-reviewer Dr. Clark were accepted, even though the IG was in possession of documents and emails – and cited them elsewhere – revealing people were not telling the truth.
- The IG came to conclusions that were contradicted by statements elsewhere in the IG report. Certain interviews in the IG report contradicted other interviews, but the IG made no mention of the inconsistencies.
- The IG cherry picked from documents and emails, excluding sentences or paragraphs that supported Dr. Goodman's allegations.
- Cleverly and subtly, wording is used in an effort to discredit Dr. Goodman. In some cases, statements in quotations are attributed to Dr. Goodman's complaint that he never made in his 270-page submittal.
- While dismissing Dr. Goodman's allegation that NPS staff failed to follow NPS policies, the IG selectively avoided analyzing the mandatory NPS policy – NPS Management Policies 2006 – that Dr. Goodman alleged NPS staff failed to follow.
- While NPS asserted in the DEIS they followed NPS policies, the IG dismissed the allegations they did not do so, saying NPS did not have to follow its own policies.
- The IG allowed NPS staff to ignore NPS policies, provide post-hoc explanations, give inconsistent answers, and never raised any of these issues in their report.
- The IG report was so poorly written and fact-checked, that it incorrectly cited the most important conclusion of the DEIS – the two major adverse impacts.
- Congress was right to question NPS science, but the DOI OIG was not the independent and honest agency to investigate potential NPS misconduct.
- What the DOI OIG did in this IG report in accommodating NPS and DOI officials is completely consistent with the findings in the House CNR report.

In summary, the IG report on Drakes Estero is the latest chapter in a history of cover-ups and whitewash investigations from both the DOI Solicitor's Office and the DOI OIG that have exonerated NPS – and Director Jon Jarvis – from serious allegations of scientific

misconduct involving Drakes Bay Oyster Company (e.g., see the appendix section on the Frost Report by DOI Field Solicitor Gavin Frost).

15. Response to assertion that other scientists do not support my analysis.

On October 27, 2011, two other elected members of the National Academy of Sciences – Dr. Peter Gleick (President, Pacific Institute) and Dr. Kenneth Raymond (Chancellor's Professor of Chemistry, U.C. Berkeley) – wrote a guest column in the Point Reyes Light newspaper entitled “*In defense of good science.*” They wrote:

The two of us have watched with dismay as the debate over wilderness protection, sustainable agriculture, the Drakes Bay Oyster Company (DBOC), and the integrity of science has spiraled into the dirt. This long-term argument – never pretty – has taken a serious turn for the worse in the past two months with an escalation of personal, ad hominem attacks and an inexcusable defense of bad science by the National Park Service (NPS) by a small number of loud players with vested interests. In particular, we decry the recent barrage of letter after letter published in The West Marin Citizen filled with personal attacks on the integrity of a highly respected scientist, Dr. Corey Goodman.

Dr. Goodman, at huge personal cost to his time and reputation, has been in the front lines of efforts to ensure that the National Park Service’s blatant disregard for scientific integrity does not go unchallenged. His efforts, partly at the request of County Supervisor Steve Kinsey, have exposed serious and serial bad science.

The NPS has refused to respond to his scientific analyses, refused to convene any sort of independent review, and continues to both mischaracterize the environmental risks of the DBOC and to refuse to analyze and review their own evidence that contradicts their own findings, including over 200,000 photographs.

We were also compelled to write this letter because false claims are going unchallenged. In the most recent issue of the West Marin Citizen, a letter writer said: “I do find it significant that no other eminent scientists have concerned themselves to corroborate Dr. Goodman’s analysis.” This is false.

Several eminent scientists have participated with Dr. Goodman in his analyses, and while readers can judge whether we fall into that category, the two of us have experience and expertise of some note and we fully support his work as well – as we have publicly stated. Indeed, it would be more accurate to say that no eminent scientists have successfully disputed Dr. Goodman’s analysis.

We are both elected members of the National Academy of Sciences. One of us is a MacArthur Fellow and President of the Pacific Institute. The other is Chancellor’s Professor of Chemistry at U.C. Berkeley. Peter Gleick also serves as chair of the American Geophysical Union’s Task Force on Scientific Integrity. Both of us have reviewed the NPS science, and are deeply disturbed by its bias, unsupported characterizations, and misrepresentations. In fact, Dr. Goodman has been far more restrained in his public statements than we have.

One of us, Kenneth Raymond, recently wrote to Department of the Interior Secretary Ken Salazar and said: “I regard this as fraud and in other occupations it could be prosecuted.” The other of us, Peter Gleick, recently wrote to Salazar’s science advisor, Dr. Marcia McNutt, and said: “This is not the first instance of scientific misconduct and misrepresentation by NPS scientists at PRNS.”

Recent letters in The Citizen have also cherry-picked phrases from the Department of the Interior "Frost Report" of March 22, 2011 on the science at PRNS to try to cast a negative impression of Dr. Goodman. In fact, that Report described the NPS scientists as having "bias," "advocacy," a "troubling mind-set," of having "mishandled" data, acted "improperly," and showed a "willingness to allow subjective beliefs and values to guide scientific conclusions."

The Report stated: "This misconduct arose from incomplete and biased evaluation and from blurring the line between exploration and advocacy through research."

The Report went on to conclude that the three NPS scientists had all violated the NPS Code of Scientific and Scholarly Conduct. Those are the key findings of the Frost Report, not the few words cherry picked by the letter writers trying to discredit those who have tried to hold the NPS accountable for the science it publishes.

Scientists are often reluctant to enter the public fray precisely because we prefer to argue facts and numbers and analysis in cases when personal attacks, vitriol, and emotion dominate. Indeed, other scientists have told us they do not want to see their good names dragged through the mud by the same kind of vicious attacks that Park supporters have launched against Dr. Goodman. We admire Dr. Goodman for his courage. We stand with him on the side of scientific integrity.

It is time for the NPS to respond directly and publicly to his criticisms or their flawed work should be retracted. Allowing the draft Environmental Impact Statement to cite this so-called science while the NPS scientists refuse to publicly debate it is a disservice to the community and to science. Independent of the debate over the oyster farm, if the decision is tainted with bad science, we all lose.

16. Senator Feinstein's statement on January 30, 2013.

I became concerned about this issue when I found that the science regarding the impacts of the oyster farm had been manipulated. The Park Service has treated the oyster farm in a biased and unfair manner, and its review process has been flawed from the beginning by repeated misrepresentations of the scientific record to portray the farm as environmentally harmful. Independent investigative bodies, including the Department of the Interior's Inspector General, the National Academy of Sciences, and a [DOI] Field Solicitor, have found serious flaws in how the Park Service used and represented its scientific findings in the environmental review process."