

May 20, 2013

From: Dr. Corey S. Goodman

To: Sally Jewell, Secretary, Department of the Interior

Re: Response to letter from Amy Trainer, Executive Director, Environmental Action Committee of West Marin (EAC), concerning allegations of scientific misconduct involving the National Park Service (NPS) and U.S. Geological Survey (USGS)

Dear Secretary Jewell:

On May 13, 2012, I submitted a formal complaint to you concerning allegations of scientific misconduct and cover-up involving National Park Service (NPS) and U.S. Geological Survey (USGS) employees<sup>1</sup>.

On May 16, 2013, Amy Trainer, Executive Director, Environmental Action Committee of West Marin (EAC), submitted a letter to you<sup>2</sup> asserting that the four allegations in my complaint are “baseless” and “have no merit.” Ms. Trainer’s letter is built on misrepresentations of facts, data, and the purpose and scope of the cited National Academy of Sciences (NAS) 2012 Report<sup>3</sup>, 2011 Marine Mammal Commission Report (MMC)<sup>4</sup>, NPS Final Environmental Impact Statement (FEIS)<sup>5</sup>, USGS Report<sup>6</sup>, Stewart Report<sup>7</sup>, and Stewart Supplemental Report<sup>8</sup>. Each of her misrepresentations is addressed below.

Ms. Trainer tries to paint this as a case of a disagreement among experts, where one of those experts changed his mind. To that end, she mischaracterizes the facts and all of the reports she cites. The expert did not change his mind; he provided the same analysis *twice*. Nonetheless, the expert’s findings were misrepresented. The expert told NPS and USGS twice – in writing – of his findings, but the agencies misrepresented his findings in their reports. This is not a case about a difference of opinions. Rather, this is a case about the fabrication of facts and a cover-up.

---

<sup>1</sup> May 13, 2013 scientific misconduct complaint filed by Dr. Corey Goodman with Interior Secretary Jewell involving the National Park Service and U.S. Geological Survey

<sup>2</sup> May 16, 2013 letter from Amy Trainer, Executive Director, Environmental Action Committee of West Marin, to Interior Secretary Jewell.

<sup>3</sup> NAS Report (August 30, 2012): “*Scientific Review of the Draft Environmental Impact Statement, Drakes Bay Oyster Company Special Use Permit*”

<sup>4</sup> Marine Mammal Commission (MMC) Report, November 22, 2011, “*Mariculture and Harbor Seals in Drakes Estero, California*,” with appendices including Appendix F “*Panel members’ reports*”

<sup>5</sup> NPS Final Environmental Impact Statement (FEIS): “*Drakes Bay Oyster Company Special Use Permit*,” November 20, 2012

<sup>6</sup> USGS Report: “*Assessment of Photographs from Wildlife Monitoring Cameras in Drakes Estero, Point Reyes National Seashore, California*,” by William A. Lellis, Carrie J. Blakeslee, Laurie K. Allen, Bruce F. Molnia, Susan D. Price, Sky Bristol, and Brent Stewart, Open-File Report 2012-1249, November 26, 2012

<sup>7</sup> Stewart Report (May 12, 2012, submitted to USGS May 3, 2012) by Dr. Brent Stewart: “*Evaluation of Time-Lapse Photographic Series of Harbor Seals Hauled Out in Drakes Estero, California, for Detecting and Assessing Disturbance Events*,” Purchase Order P12PX13032, Hubbs-SeaWorld Res. Inst. Technical Report 2012-378; included Dr. Stewart’s spreadsheet “*Drakes Estero Harbor Seals HSWRI.xlsx*”

<sup>8</sup> Dr. Brent Stewart’s two-page Supplemental Report (“*BSS Suppl review.pdf*”), a review of May 15, 2008 and June 11, 2008 photographs, submitted to USGS Dr. Carrie Blakeslee on December 10, 2012.

My complaint arose out of misrepresentations of scientific investigations made by NPS, and more recently assisted by USGS, into the question of whether Drakes Bay Oyster Company (DBOC) skiffs disturb harbor seals in Drakes Estero. This six-year quest by NPS to find harbor seal disturbances by DBOC skiffs has been misguided. The physical landscape argues against such disturbances: the oyster boats typically stay over 700 yards from the harbor seals, with an intervening sandbar between them<sup>9</sup>.

In 1998, Drs. Pamela Yochem and Brent Stewart (Hubbs-SeaWorld Research Institute) found that visitors were disturbing the harbor seals at Children's Pool in La Jolla<sup>10</sup>. A few years later, Dr. James Lecky (National Marine Fisheries Service, NOAA) presented further analysis on the disturbance of harbor seals at Children's Pool to the Marine Mammal Commission<sup>11</sup>. The California Coastal Commission (CCC) approved a rope barrier in 2012, intended to keep visitors approximately 50 feet away from harbor seals at Children's Pool in La Jolla<sup>12</sup>. This 50-foot exclusion zone is in contrast to harbor seals in Northern California, where NPS and CCC continue to search for harbor seal disturbances by the oyster farm at distances of over 2,000 feet, or forty times farther.

The same harbor seal behavior expert, Dr. Brent Stewart, who found evidence of harbor seal disturbance by visitors at very close distance at Children's Pool, was selected by USGS and NPS to evaluate 165,000 NPS photographs from Drakes Estero. Dr. Stewart found "*no evidence*" of harbor seal disturbance by DBOC oyster skiffs at several thousand feet from the harbor seals in Drakes Estero (although he did find evidence of disturbance by kayakers at 50-100 feet).

The four key allegations of my complaint filed on May 13, 2013 are simple: despite expert scientific analysis by the NPS and USGS-selected harbor seal behavior expert (Dr. Brent Stewart in the Stewart Report) who found "*no evidence of disturbance*"<sup>13</sup> and "*no obvious disturbance*,"<sup>14</sup> the USGS and NPS misrepresented his findings in concluding that DBOC skiffs caused two disturbances:

- 1) USGS issued a report (the USGS Report) misrepresenting the Stewart Report by claiming that DBOC skiff activity correlated with harbor seal disturbances<sup>15</sup>;
- 2) NPS issued its Final Environmental Impact Statement (FEIS) citing and further misrepresenting the USGS and Stewart Reports by claiming DBOC skiff activity

---

<sup>9</sup> NOAA's National Marine Fisheries Service (NMFS), the federal agency tasked with protecting marine mammals such as harbor seals, wrote NPS in November 2011 and stated: "*Based on the evidence and information that has been made available, the harbor seal population in Drakes Estero appears stable and healthy. We have no documentation of any recent disturbance of harbor seals by the aquaculture operation. We have no records of violations by DBOC or law enforcement investigations of DBOC under the Marine Mammal Protection Act.*" Letter from Rodney R. McInnis, Regional Administrator, NMFS, to Cicely Muldoon, Superintendent, Point Reyes National Seashore, NPS, at 1 (Nov. 17, 2011).

<sup>10</sup> Yochem, P.K., and B.S. Stewart. 1998. "*Behavioral Ecology and Demography of Seals and Sea Lions at the Seal Rock Marine Mammal Reserve,*" Hubbs-SeaWorld Technical Report No. 98-282.

<sup>11</sup> Lecky, James H. 2002. "*Whose Beach Is It Anyway? Managing Seals at Children's Pool, La Jolla CA,*" Report to the Marine Mammal Commission for its Workshop on the Management of Hawaiian Monk Seals, released January 2003.

<sup>12</sup> July 11, 2012, California Coastal Commission approved the application for San Diego Children's Pool rope barrier to protect harbor seals during pupping season; the rope is around 50 feet from the seals.

<sup>13</sup> Stewart Report spreadsheet, Stimuli & disturbances, May 15, 2008: "*no evidendence [Sic] of disturbance to seals*"

<sup>14</sup> Stewart Report spreadsheet, Stimuli & disturbances, June 11, 2008: "*no obvious disturbance*"

<sup>15</sup> USGS Report, p. 5, the two disturbances "*associated*" with DBOC skiffs are May 15 & June 11, 2008

- caused harbor seal disturbances<sup>16</sup>, transforming a finding of “no evidence of disturbance” into one of cause-and-effect, and driving a moderate adverse impact;
- 3) USGS believed its analysis of the NPS photographs was “very high profile” and “very high priority” because this analysis was needed to “brief Secretary Salazar” for his decision on the DBOC permit<sup>17</sup>, apparently leading to briefings of two Assistant Secretaries<sup>18</sup>; and
  - 4) USGS, after its report was released and questions raised<sup>19</sup>, requested a subsequent re-review<sup>20</sup> of the key harbor seal data by Dr. Stewart. Dr. Stewart’s re-analysis is included in his Supplemental Report<sup>21</sup> which confirmed his earlier finding of no evidence of disturbance by DBOC skiffs. This report that should have led USGS to retract its USGS Report, inform NPS of the major mistakes in their FEIS, and inform the Secretary of mistakes in what was presented to inform his decision, but instead Dr. Stewart’s Supplemental Report was not disclosed to the relevant departments and agencies, elected officials, and public, and was not included in a USGS response to a FOIA request<sup>22</sup>. In other words, Stewart’s Supplemental Report was covered up.

Some of the information contained in the complaint (i.e., information supporting allegations #1 and #2) was also filed with the U.S. District Court<sup>23</sup>.

In her letter, Ms. Trainer makes six major points in disputing these allegations. All six of her assertions are incorrect and based on misrepresentations. All six assertions concerning the science are addressed below.

In addition to facts concerning science, Ms. Trainer misrepresents other facts as well. For example, in the first sentence of her letter, she writes:

*“The Environmental Action Committee of West Marin has been intimately involved in the effort to uphold the government’s promise to taxpayers to protect the only designated marine wilderness area in the continental United States ...”*

While a statement Ms. Trainer repeats often, it is incorrect. If DBOC’s lease expires, Drakes Estero will not be the first marine wilderness area in the continental United States. Rather, it will be the second. The first, as Ms. Trainer is aware, already exists, and adjoins Drakes Estero. As correctly noted by Secretary Salazar in his November 29, 2012 decision memo concerning the DBOC permit<sup>24</sup>, he wrote:

*“In 1999 the eastern portion of Drakes Estero, known as the Estero de Limantour, was converted from potential to designated wilderness, becoming the first (and*

---

<sup>16</sup> NPS FEIS, p. 376, according to “USGS assessment (Lellis et al., 2012), ... two flush disturbance events were attributed to [DBOC] boat traffic”

<sup>17</sup> Email from USGS Dr. William Lellis to USGS Dr. Carrie Blakeslee, February 7, 2012.

<sup>18</sup> Email from USGS Dr. William Lellis to USGS Dr. Carrie Blakeslee, June 25, 2012; email from USGS Hannah Hamilton to USGS Dr. William Lellis, June 26, 2012.

<sup>19</sup> Emails from Dr. Goodman to USGS Dr. William Lellis on December 3 and December 5, 2012.

<sup>20</sup> Conversation between Dr. Goodman and Hubbs-SeaWorld Dr. Brent Stewart, May 10, 2012.

<sup>21</sup> Dr. Stewart’s Supplemental Report – a two-page report on the re-review of the time-lapse sequences for May 15, 2008 and June 11, 2008 – was submitted to USGS Dr. Carrie Blakeslee on December 10, 2012.

<sup>22</sup> Dr. Stewart’s Supplemental Report was not provided by USGS in their complete response to a FOIA request, raising questions of whether the report was part of the official USGS record, or alternatively whether it was communicated via private, non-USGS email so as to exclude it from disclosure.

<sup>23</sup> December 20, 2012 Declaration of Dr. Corey Goodman in U.S. District Court, Northern California District, and Exhibit 7, December 20, 2012 report from Dr. Goodman to Kevin Lunny, DBOC

<sup>24</sup> Secretary Salazar’s November 29, 2012 decision memo concerning the DBOC permit, p. 1.

*still the only) marine wilderness on the Pacific coast of the United States outside of Alaska.”*

In summary, Ms. Trainer misrepresents the facts when she continues to assert that Drakes Estero has the potential to become the first marine wilderness on the Pacific coast of the United States. In fact, it would not even be the first marine wilderness in Point Reyes. One already exists – Estero de Limantour.

## **1. Ms. Trainer Was Incorrect In Her Sweeping Assertions and Attacks**

In her opening two paragraphs of her letter, and in her concluding remarks, Ms. Trainer asserts that the allegations in my complaint are baseless, and that I have been discredited. Ms. Trainer states that my complaint is “*non-germane,*” “*manufactured,*” has “*no merit,*” is “*without merit,*” “*baseless,*” “*misleading,*” “*unpersuasive,*” and “*attacking peer-reviewed science*” including that done by the “*National Academy of Sciences.*” She concluded I attempted to construct a “*conspiracy,*” offered “*no credible evidence,*” built “*straw-man caricatures,*” and my claims “*are a waste of taxpayer money, fail miserably on the merits, and must be rejected.*”

Concerning the notion that my complaint is baseless and other epithets, I think it appropriate to leave that decision to the independent blue-ribbon panel of eminent scientists recommended in my complaint, rather than to a biased, non-scientist activist.

Concerning the notion that I attacked the National Academy of Sciences (NAS) (of which I am an elected member), this is an odd mischaracterization of my complaint since it is silent about the 2012 NAS Report, a report prepared in response to a Congressional directive to review the 2011 Draft EIS that dismissed the 300,000 NPS photographs<sup>25</sup>.

It is puzzling how or why Ms. Trainer cites the NAS Report and incorrectly insists that I criticized it since the NAS panel had no access to the then-unpublished FEIS, USGS Report, Stewart Report, or Stewart Supplemental Report – each based on Dr. Stewart’s expert analysis of the NPS photographs.

Concerning the notion that it was inappropriate to criticize the USGS Report because it was peer-reviewed, I make the following five observations.

- 1) Although the words ‘peer review’ are the same, the DOI notion of peer-review is quite different from the scientific community’s notion of anonymous review by experts without conflicts or relationships to the authors or sponsoring institution.
- 2) The scientific community openly criticizes peer-reviewed papers all the time. Critical analysis of even peer-reviewed papers is part of the scientific method. An increasing number of peer-reviewed papers ultimately get retracted<sup>26</sup>.
- 3) The key author of the USGS Report, harbor seal behavior expert Dr. Stewart, was not given a copy of the figures, legends, or appendix to review prior to

---

<sup>25</sup> Draft Environmental Impact Statement, September, 2011, p. 181, “*Because the collection of these photos was not based on documented protocols and procedures, the body of photographs does not meet the Department’s standards for a scientific product. As a result, the photographs have not been relied upon in this EIS.*”

<sup>26</sup> Fang, F.C., Steen, R.G., and A. Casadevall, “*Misconduct Accounts for the Majority of Retracted Scientific Publications,*” Proceedings of the National Academy of Sciences, October 1, 2012: “*A detailed review of all 2,047 biomedical and life-science research articles indexed by PubMed as retracted ... revealed that ... 67.4% of retractions were attributable to misconduct ... The percentage of scientific articles retracted because of fraud has increased ~10-fold since 1975.*”

- publication (all of which were key to the misrepresentations of his report), and did not know he was going to be listed as an author<sup>27</sup>.
- 4) The senior author of the USGS Report, Dr. William Lellis, acknowledged the contradiction between the appendix (which correctly reflects Dr. Stewart's finding of "no obvious disturbance" for June 11, 2008) and the text (which claims a correlation of a harbor seal disturbance with the DBOC skiff for this date). Dr. Lellis repeated three times during our conversation that this was an "obvious contradiction" that "didn't get caught in review."<sup>28</sup>
  - 5) There is no evidence that the peer reviewers of the USGS Report were given a copy of the Stewart Report, and thus they would not have known that the Stewart Report found "no evidence of disturbance" concerning the May 15, 2008 photographs. Without access to the Stewart Report, the reviewers would not have known that Dr. Lellis and colleagues failed to include Dr. Stewart's four critical words ("no evidence of disturbance") in Appendix 1, a spreadsheet Dr. Lellis claimed was taken from Dr. Stewart's spreadsheet.<sup>29</sup>

Moreover, leaving aside Dr. Brent Stewart's Report and Supplemental Report, the FEIS cites the USGS Report for data, analysis, and conclusions that are nowhere to be found in that report. The FEIS claims that "[t]wo flushing disturbance events were attributed to boat traffic" by the USGS Report (p. 376). The body of the USGS Report does not use the word "attribute" and does not claim that the boats caused any disturbances. Rather, the USGS Report states that "two [flushing events] were associated with boat activity..."<sup>30</sup> Likewise, Appendix 1 of the USGS Report – an easy-to-understand chart summarizing analysis of 75 potential disturbance events – does not conclude that the oyster skiffs caused any harbor seal disturbances. In fact, the closest Appendix 1 comes to "attributing" a seal disturbance to the oyster skiffs is the "comment" that on May 15, 2008, "Boat visits area; people walking; very poor camera focus; some seals flush into water just after boat leaves the area."<sup>31</sup> The box labeled "Connection Between Stimulus and Seal Flushing," which would contain any conclusions as to the cause that a seal flushing should be "attributed to," is blank. Even taking the USGS Report at face value, it does not say what the FEIS claims it says.

Finally, Ms. Trainer claims to provide evidence that I am discredited when she writes:

*"For example, as the Executive Director of the Marine Mammal Commission Dr. Tim Ragen stated to Dr. Goodman on June 6, 2012 regarding the conclusions Dr. Goodman made after reviewing the wildlife photographs: "Your characterization of the photographs... is, in my view, incomplete, inaccurate, and misleading ... I*

---

<sup>27</sup> April 30, 2013, Email from Dr. Brent Stewart to Dr. Stephanie Owens, Congressman Jared Huffman's office, in response to her April 29, 2013 request for his reports and drafts; Dr. Stewart included four documents: his original report, his original spreadsheet, his "brief comments" of a September 2012 draft version of the USGS Report, and his December 10, 2012 Supplemental Report. To my knowledge, this was the first time Dr. Stewart's Supplemental Report was publicly released. Once released, in response to my request for access to the same materials, Dr. Stewart provided it to me on May 9, 2013.

<sup>28</sup> December 7, 2012, 90-minute phone conversation between Dr. Goodman and Dr. Lellis at noon PT; Dr. Goodman's notes of that conversation: "USGS Dr. Lellis & Dr. Goodman conversation & emails.pdf".

<sup>29</sup> Dr. Goodman asked Dr. Lellis by email for a copy of the Stewart Report on December 5, 2012; Dr. Lellis responded by email on the same day, writing that Appendix 1 of the USGS Report was essentially Dr. Stewart's Report. "Yes, essentially that is Appendix 1 of the report."

<sup>30</sup> USGS Report, p. 3.

<sup>31</sup> USGS Report, Appendix 1 at 4.

*disagree completely with your interpretation of the seal behavior documented ...*" (Trainer Letter, p. 1).

First, the date of the 20-page letter from Dr. Ragen, Executive Director, MMC, to me is June 17, not June 6, 2012<sup>32</sup>.

Second, Ms. Trainer makes inappropriate use of ellipses, eliminating not just a few words, but rather eliminating an intervening *four pages of text*, combining a partial quote from page 14 concerning photographs from March 14, 2008 with a partial quote from page 18 concerning photographs from May 15, 2008.

Concerning the disputed analysis of the March 14, 2008 photographs, Dr. Ragen's criticism of my characterization revealed that he valued his private conversation with NPS scientists (in which they claimed evidence for a disturbance) over testimony given by them to the Solicitor's Office (in which they claimed no evidence for a disturbance).

Field Solicitor Gavin Frost was directed by the Office of the Solicitor (DOI) to conduct a review of the NPS secret cameras, 300,000 photographs, and detailed NPS logs in November 2010. In December 2010, NPS scientists told Mr. Frost, under oath, that the photographs revealed no harbor seal disturbances by DBOC. In particular, they told Mr. Frost that there was no evidence of disturbance on March 14, 2008. In my critique of the MMC Report, I quoted from the Frost Report<sup>33</sup> concerning the March 14, 2008 record. In contrast, Dr. Ragen reported on private discussions (likely in 2011) with the same NPS scientists. In those private conversations, the NPS scientists evidently contradicted their testimony to the Field Solicitor. Based on these differences, Dr. Ragen accused me of being "*inaccurate*" and "*misleading*."

Concerning the disputed analysis of the May 15, 2008 photographs, Dr. Ragen claimed the photographs show a DBOC disturbance, but admitted that an expert needed to conduct a fuller examination of the photos. Dr. Stewart did such a fuller examination (twice) and concluded no evidence of disturbance. In summary, the Stewart Report and Stewart Supplemental Report confirm what I wrote to Dr. Ragen that the May 15, 2008 photographs provided no evidence of a harbor seal disturbance by the DBOC skiff.

On June 7, 2010, MMC held a meeting, chaired by Dr. Ragen, at Point Reyes National Seashore that included MMC staff, NPS scientists and officials, Mr. Lunny and his consultant, and me (representing Marin County Supervisor Steve Kinsey<sup>34</sup>) to focus on the NPS claims of so-called harbor seal disturbances caused by DBOC and "*to resolve disputed data points*."<sup>35</sup> The agenda stated that we would review "*each data point in the NPS database attributed to mariculture*." As shown in the Marine Mammal Commission (MMC) Report, the list presented by NPS for that meeting did not include May 15,

---

<sup>32</sup> June 17, 2012 letter from Dr. Tim Ragen, MMC Executive Director, to Dr. Corey Goodman, in response to Dr. Goodman's critiques of the November 2011 MMC Report submitted on November 27 and 28, 2011, and January 6, 2012.

<sup>33</sup> Frost Report, March 22, 2011, 36-page report from Field Solicitor Gavin Frost, DOI, "*Public Report on Allegations of Scientific Misconduct at Point Reyes National Seashore, California*," in response to Dr. Goodman's allegations of misconduct concerning NPS secret cameras, 300,000 photographs, and detailed NPS logs (showing no DBOC disturbances) submitted to Secretary Salazar on November 22, 2010.

<sup>34</sup> I became involved in the oyster farm issue on April 28, 2007 at the request of Marin County Supervisor Steve Kinsey who asked me to review the NPS data vs. the NPS claims and testify at an upcoming Marin County Board of Supervisors meeting on May 8, 2007 at his invitation.

<sup>35</sup> Dr. Ragen, MMC Executive Director, held a MMC meeting on June 7, 2010 with NPS, DBOC, and others to discuss NPS disturbance records; a draft agenda for the meeting was distributed on June 4, 2010

2008<sup>36</sup>. According to NPS scientists, who had access to the May 15, 2008 photographs, no such disturbance existed. As a result, the so-called disturbance on May 15, 2008 was not discussed at the June 7, 2010 MMC meeting.

A year later, in the draft MMC Report<sup>37</sup>, concerning the May 15, 2008 NPS photographs and videos, Dr. Ragen wrote<sup>38</sup>:

*“In both cases, the boat was at least hundreds of meters away from the seals and may have resulted in a few head alerts, particularly on 15 May 2008. That being said, the videos are neither long enough nor clear enough to demonstrate that the seals were disturbed by the boat.”*

On June 7, 2011, Kevin Lunny and I spent 8 hours with Dr. Ragen in my office, with much of the time spent going over the so-called NPS disturbance events and the NPS photographs. By the end of the meeting, Dr. Ragen told both of us that there was no evidence of harbor seal disturbances that could be attributed to DBOC skiffs.

Given what NPS wrote in June 2010 and what Dr. Ragen wrote and said in June 2011, we were surprised to read the final MMC Report released on November 22, 2011. Dr. Ragen described the NPS photographs and videos from May 15, 2008 in more detail, and concluded that the DBOC skiff did indeed disturb the harbor seals<sup>39</sup>. Dr. Ragen reversed his own analysis of the NPS photographs, an analysis never discussed with his panel members, apparently never discussed or reviewed with any other independent marine mammal behavior expert; never discussed with NPS, DBOC, or me at the June 7, 2010 MMC meeting to discuss disturbances; never discussed with DBOC or me at the June 7, 2011 meeting to discuss the draft MMC Report; and ultimately published with a different conclusion in his final MMC Report as compared to his draft MMC Report. Concerning his finding of a disturbance on May 15, 2008, Dr. Ragen wrote:

*“A fuller examination of the photographs is necessary to form a conclusion with a reasonable level of confidence.”* (p. 27).

In the MMC Report, Dr. Ragen’s analysis of the May 15, 2008 photographs led to his only finding of a DBOC disturbance during the DBOC ownership from 2005 to 2011. Nevertheless, this finding of a single DBOC disturbance (with the caveat that *“a fuller examination of the photographs is necessary”*) led Dr. Ragen to conclude in the 2011 MMC Report<sup>40</sup>:

*“After examining individual disturbance records, the Commission concludes that, from time to time, mariculture activities have disturbed the seals.”*

This MMC conclusion (the *“from time to time”* conclusion) was based on a single disturbance event that Dr. Ragen attributed to DBOC during the DBOC ownership years 2005-2011.

The May 15, 2008 event is the only instance in which Dr. Ragen found *“convincing evidence of seal disturbance that likely was caused ...”* by a DBOC skiff<sup>41</sup>.

---

<sup>36</sup> MMC Report, Table 2, p. 17: *“Disturbances noted by Park Service staff and volunteers during harbor seal counts,”* includes 26 entries, but not May 15, 2008.

<sup>37</sup> June 7, 2011, Draft MMC Report distributed by Dr. Ragen; on that day, Dr. Ragen met for 8 hours with Kevin Lunny and Dr. Goodman in Dr. Goodman’s office to discuss the draft, with focus on disturbances

<sup>38</sup> Draft MMC Report, p. 17.

<sup>39</sup> Final MMC Report, p. 26-27.

<sup>40</sup> Final MMC Report, p. ii.

<sup>41</sup> Final MMC Report, p. 27.

This is the same sentence quoted in the NPS FEIS<sup>42</sup> when it cites the MMC Report:

*“Further, after examining individual disturbance records, MMC (2011b) concluded that, “from time to time, shellfish operation activities have disturbed the seals.” (page 376)*

On January 6, 2012, I wrote to Dr. Ragen<sup>43</sup> and asserted that he was mistaken concerning the NPS photographs from May 15, 2008. I presented evidence:

- 1) Dr. Ragen had misinterpreted the photographs;
- 2) NPS scientists Dr. Sarah Allen and Sarah Codde claimed these photographs were inconclusive in formal interviews with Field Solicitor Frost in his investigation of the NPS secret cameras, 300,000 photographs, and detailed NPS logs of those photos;
- 3) NPS Dr. David Press’ written description of the same photographs contradicted Dr. Ragen’s interpretation of the photographs; and
- 4) Dr. Ragen had declined my offer on January 1, 2011 to discuss these photographs and analyze them together.

In my email to Dr. Ragen on January 1, 2011, I wrote the following concerning the May 15, 2008 photographs<sup>44</sup>:

*“They [NPS] are now claiming -- both in the letter to Frost [Field Solicitor Gavin Frost], and in the local newspaper (Pt. Reyes Light) -- that the photos from both sources (the secret cameras and the 3rd Sarah Codde database) show a bona fide disturbance on May 15, 2008. ... He [Mr. Frost] said that Sarah Allen admitted that the photos showed no disturbances by DBOC, and of course Frost himself said that if they did, we all would have been shown them long ago. He too is puzzled as to why they suddenly want to claim that a non-event is an event, when we can look at the photos. Frost knows this date is not on any of the disturbance lists they gave you. It is the set of photos I described to you many months ago of a few pups swimming on the surface of the water with their buddies who are about to haul out. They swim on the surface for 1-2 minutes. Their moms don’t raise their heads. Nobody on shore is concerned. The DBOC boat had left 4-5 minutes prior and was over 1/2 mile away. Yet David Press, and NPS spokesperson Melanie Gunn to the local newspaper, now call this a disturbance.”*

An hour later, Dr. Ragen replied<sup>45</sup>:

*“I’m working on the report, and so far, I don’t see a need for additional information.”*

By ‘report,’ Dr. Ragen meant the draft MMC report in which he did not find evidence for a disturbance by DBOC in the May 15, 2008 photographs.

In my letter to Dr. Ragen on January 6, 2012, I asserted that Dr. Ragen had misinterpreted the May 15, 2008 photographs, and thus incorrectly derived his “from

---

<sup>42</sup> FEIS, p. 376.

<sup>43</sup> January 6, 2012, 28-page letter from Dr. Goodman to Marin County Supervisor Steve Kinsey, copied to Dr. Ragen, MMC, “*Marine Mammal Commission Drakes Estero Report claim that “from time to time, mariculture activities in the estuary do disturb harbor seals.”*

<sup>44</sup> January 1, 2011, email from Dr. Goodman to Dr. Ragen, MMC, concerning and including document given to DOI Field Solicitor Gavin Frost by NPS David Press, and Dr. Goodman’s response to it.

<sup>45</sup> January 1, 2011, Dr. Ragen email to Dr. Goodman in response to Dr. Goodman’s earlier email.



*time to time*" conclusion. Dr. Ragen replied to my critique in his June 17, 2012 letter and wrote:

*"... I disagree completely with your interpretation of the seal behavior documented in these photographs." (page 18)*

Concerning the May 15, 2008 photographs, in the MMC Report, Dr. Ragen wrote that "*a fuller examination of the photographs is necessary to form a conclusion with a reasonable level of confidence.*" In other words, Dr. Ragen acknowledged that it was not possible to conclude with even a *reasonable level of confidence* that DBOC's skiff caused that alleged disturbance without further independent scientific study and expert analysis.

The independent "*fuller examination of the photographs*" was conducted (twice) by Dr. Brent Stewart, Hubbs-SeaWorld Research Institute harbor seal behavior expert. On May 3, 2012, Dr. Stewart submitted his Stewart Report to USGS and NPS, and then again on December 10, 2012, at the request of USGS, Dr. Stewart submitted his Supplemental Report to USGS.

In his initial Stewart Report, concerning the May 15, 2008 photographs, Dr. Stewart found "*no evidence of disturbance.*"

In his Supplemental Report, Dr. Stewart wrote:

*"The small movement of seals obvious in this sequence appeared to me to be most similar to responses of small number of neighboring seals to sudden movements of recently hauled out seals (especially juveniles) that are settling at haulout but energetic and active. I did not consider this to be a flush in response to some other kind of stimulus, and no other stimulus was apparent to account for it."*

In summary, Dr. Stewart confirmed my interpretation of the May 15, 2008 photographs as showing "*no evidence for disturbance.*" Dr. Stewart similarly confirmed what the NPS scientists told Field Solicitor Gavin Frost when they too concluded that there was no evidence of disturbance.

As a result, Dr. Ragen's criticism in his June 17, 2012 letter is incorrect. The independent harbor seal behavior expert concluded that I was correct.

Given Dr. Stewart's finding, repeated on May 3 and December 10, 2012, I respectfully urge you to take the following steps:

- 1) MMC should be instructed to issue a correction of the MMC Report with a concomitant retraction of the "*from time to time*" conclusion,
- 2) NPS should be instructed to issue a correction of the NPS FEIS with a concomitant retraction of the "*from time to time*" quotation, and
- 3) NPS should be instructed to issue a correction of the NPS FEIS with a concomitant retraction of the finding of a "*moderate adverse impact*" of the oyster farm on the harbor seals.

In summary, Ms. Trainer was incorrect in her sweeping assertions and attacks.

## **2. Ms. Trainer Misrepresented the NPS FEIS**

Right from the outset of this assertion, Ms. Trainer repeats incorrect facts when she states that DBOC makes "*thousands of motorized boat trips per year*" (p. 20) onto Drakes Estero. Although the NPS FEIS incorrectly made that assertion, Ms. Trainer has been privy to information filed with NPS showing that this statement is greatly exaggerated. As

shown in the Data Quality Act complaint filed by Cause of Action in August 2012<sup>46</sup>, whereas the NPS DEIS claimed that DBOC's skiffs make "up to 12 40-minute trips/day"<sup>47</sup> (giving rise to 8 hours of boat activity per day, and thousands of motorized boat trips per year), when in fact DBOC's skiffs make "on average, one 40 minute trip/day"<sup>48</sup> (giving rise to around 300 boat trips per year)<sup>49</sup>. On December 21, 2012, NPS Director Jon Jarvis denied the DQA complaint<sup>50</sup>, refused to correct mistakes in the FEIS, stating that:

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

Director Jarvis stated in his letter that, even if a document intentionally misrepresented scientific data, that document is unreviewable so long as it did not play a central role in a policy decision. As noted below, the FEIS did help inform the Secretary's decision.

Secretary Salazar wrote<sup>51</sup>: "... the DEIS and FEIS support the proposition that the removal of DBOC's commercial operations in the estero would result in long-term beneficial impacts to the estero's natural environment."<sup>52</sup> He went on to write that the DEIS and FEIS "have informed me... and have been helpful to me in making my decision."

Even if the Secretary had not relied on the FEIS in making his decision about DBOC's permit application, the DEIS and FEIS are being relied upon in other policy decisions.<sup>53</sup>

Ms. Trainer quotes from page 375 of the FEIS as stating that the FEIS "does not cite or rely on the USGS Report":

*"the continuation of DBOC activities ... are likely to have adverse impacts on harbor seals based on documented correlations between shellfish operations and harbor seal behavior in Drakes Estero (NAS 2009, Becker, Press, and Allen 2011,*

---

<sup>46</sup> Complaint about Information Quality (Data Quality Act or DQA complaint) filed on August 7, 2012 by Cause of Action, on behalf of Kevin and Nancy Lunny and Dr. Corey Goodman, to NPS.

<sup>47</sup> DEIS, supra note 5, at Table 3-3, p. 204.

<sup>48</sup> Cause of Action 2012 DQA, section 7.1.3, p. 25.

<sup>49</sup> This number has been verified by examining the detailed NPS logs of the 300,000 photographs from the NPS secret cameras, and counting the number of boat trips per day during the harbor seal pupping season.

<sup>50</sup> December 21, 2012 two-page letter from NPS Director Jon Jarvis to Amber Abbasi, Chief Counsel for Regulatory Affairs, Cause of Action, in response to and rejecting the DQA filed by Cause of Action on August 7, 2012.

<sup>51</sup> November 29, 2012, seven-page decision memo from Secretary Salazar concerning DBOC's permit.

<sup>52</sup> Secretary Salazar's November 29, 2012 decision memo concerning the DBOC permit, p. 5.

<sup>53</sup> For example, in a January 7, 2013 letter from Dr. Robert Rheault, Executive Director, East Coast Shellfish Growers Association, to Kevin Lunny (owner, DBOC), Dr. Rheault wrote: "*The NPS documents have already done great harm, and we can be certain that if they are not retracted or corrected they will continue to be used against the shellfish aquaculture industry at public hearings for years to come, both in this country and around the world. I personally know of two cases where the issues raised in the DEIS have already been used to quash oyster lease applications: one in Alabama and one in South Carolina.*" He went on to write: "*I was discussing your case with growers from Australia and New Zealand and they were quite concerned that the false claims of marine mammal impacts would be used to thwart leases in their countries as well. When government scientists make these assertions of impact, these claims seem to carry more weight than when they are made by an NGO or university researcher.*"

MMC 2011b).” *This FEIS statement shows that the FEIS impact conclusion regarding harbor seals does not cite or rely on the USGS Report as providing any “documented correlations.” Thus, there is no merit to Dr. Goodman’s claim ...”*

There are multiple misrepresentations in this statement by Ms. Trainer.

First, she once again misused ellipses to distort the meaning of a statement. In the first sentence, she deletes the words:

*“would include the operation of at least two motorboats in the permitted area (approximately eight hours a day, six days a week, year round) and the continued placement and maintenance of bags on sandbars and mudflats adjacent to harbor seal protection areas. These ongoing actions ...”*

As described above, the NPS FEIS made this statement based upon incorrect numbers of boat trips (eight hours of imagined boat trips per day versus 40 minutes of actual boat trips per day) and incorrect statements that oyster bags are adjacent to harbor seals (when in reality they are hundreds of yards away).

Second, Ms. Trainer accepts the NPS FEIS citing of the 2009 NAS Report<sup>54</sup>, a report with which she is familiar and thus should know the FEIS is incorrectly citing. The 2009 NAS Report found that NPS misrepresented its own data<sup>55</sup>, did not accept the NPS correlation of oyster activity with harbor seal behavior, was highly critical of the NPS correlation and so-called disturbance records<sup>56</sup>, and recommended that time- and date-stamped photographs could help resolve this controversy<sup>57</sup>.

Third, and most important, Ms. Trainer misrepresented the FEIS by selectively quoting from it. She quoted (see above) from page 375, but failed to quote the key paragraphs leading up to the finding of a “*moderate adverse impact*” on pages 376 and 377. That finding did cite and rely on the USGS Report, contrary to Ms. Trainer’s assertion. The FEIS stated<sup>58</sup>:

*“Further, after examining individual disturbance records, MMC (2011b) concluded that, “from time to time, shellfish operation activities have disturbed the seals. However, the data used in the analysis are not sufficient to support firm conclusions regarding the rate and significance of such disturbance” (MMC 2011b). Additionally the USGS assessment (Lellis et al. 2012) of the more than 250,000 digital photographs taken from remotely deployed cameras overlooking harbor seal haul-out areas in Drakes Estero attributed a specific stimulus to 6 of the 10 observed flushing disturbance events. Two flushing disturbance events*

---

<sup>54</sup> 2009 National Academy of Sciences (NAS) Report (released May 5, 2009): “*Shellfish Mariculture in Drakes Estero, Point Reyes National Seashore, California*”

<sup>55</sup> Id., p. 53: NPS “... *selectively presented, over-interpreted, or misrepresented the available scientific information on potential impacts of the oyster mariculture operation.*”

<sup>56</sup> Id., p. 57-58: Concerning the NPS analysis, the NAS wrote: “... *the limitations of the analysis and hence tenuous nature of the conclusions may not be obvious to the non-expert.*” “*For these reasons, the Becker et al. (2009) paper has limited value for understanding the long-term trends in seal counts in Drakes Estero.*” “*Hence, the disturbance monitoring conducted by NPS is inadequate for rigorous inferences on the impacts of mariculture on harbor seals.*”

<sup>57</sup> Id., p. 36: 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.*”

<sup>58</sup> FEIS, p. 376-377.

*were attributed to [DBOC] boat traffic at nearby sand bars, two were attributed to a kayak using the lateral channel (note kayak was in Drakes Estero in violation of seasonal closure), and two appeared to be related to seabirds landing among the seals.*

*Alternative B [DBOC 10-year renewal] would result in long-term moderate adverse impacts on harbor seals for another 10 years due to the seal displacement effects of human activities in Drakes Estero associated with DBOC's operation, and the potential for disturbances known to disrupt harbor seal behavior."*

In summary, in contrast to Ms. Trainer's assertion, I did not overstate the importance of the USGS Report to the harbor seal impact conclusion in the FEIS. The MMC Report concluded that "from time to time," the oyster farm disturbs the harbor seals, but based that conclusion on only a single event in which a disturbance was attributed to DBOC -- May 15, 2008. The MMC analysis of May 15, 2008 relied on the NPS photographs. The MMC Report went on to suggest that "a fuller examination of the photographs is necessary to form a conclusion with a reasonable level of confidence." That "fuller examination of the photographs" was conducted (twice) by Dr. Brent Stewart and presented to USGS and NPS on May 3, 2012 as the Stewart Report, and again after a subsequent analysis to the USGS on December 10, 2012 as the Stewart Supplemental Report. Both times, Dr. Stewart found "no evidence" of disturbances.

The FEIS relies on the USGS Report to turn the MMC Report's weak example that required a fuller examination into a bona fide example of causation. On pages 376-277, the FEIS quotes the USGS Report as providing that validation.

The FEIS describes the result of the USGS Report directly before it concludes that Alternative B would result in a long-term moderate adverse impact to harbor seals. The USGS report was critical to the FEIS's conclusion of a long-term moderate adverse impact to harbor seals.

In summary, Ms. Trainer misrepresented the NPS FEIS.

### **3. Ms. Trainer Misrepresented the NAS Report**

Although I never quoted from the 2012 NAS Report, that fact did not prevent Ms. Trainer from asserting that I disagreed with the NAS Report. In the heading for this section, she wrote (page 2):

*"The National Academy of Sciences and peer-reviewed research confirm harbor seal disturbances from oyster operations, but Dr. Goodman says he knows better."*

Ms. Trainer misrepresents the NAS Report. The NAS did not confirm harbor seal disturbances from oyster operations; her assertion that it did is a misrepresentation of the NAS Report.

She went on to write (page 2):

*"Dr. Goodman apparently does not agree with the findings of the NAS that demonstrate that continued oyster operations would likely result in adverse impacts to harbor seals, but that does not change the fact that the NAS affirmed the peer-reviewed research on this matter."*

I said nothing of the kind. I could neither agree nor disagree with the NAS Report (released on August 30, 2012) because the NAS was not asked to review the USGS and

Stewart Reports, and did not do so. The NAS reviewed the DEIS that did not include the MMC Report, the USGS Report, or the Stewart Report. Disturbances from May 15, 2008 and June 11, 2008 were not mentioned in the NAS Report. The USGS Report was not released until November 26, 2012.

Moreover, the NAS review of the DEIS was limited in scope. The NAS Report states<sup>59</sup>:

*“The committee was asked not to perform an independent evaluation of the environmental impacts of the proposed alternatives.”*

Ms. Trainer overlooked and ignored what the NAS Panel did conclude. The NAS concluded that the finding of a “*moderate adverse impact*” to harbor seals was highly uncertain.<sup>60</sup> In the row concerning harbor seals, the NAS committee concluded the impact was of “*high uncertainty*,” and wrote: “*Seals may tolerate or habituate to DBOC activities resulting in minor impacts.*” The NAS committee defined “*high uncertainty*” as follows<sup>61</sup>:

*“High uncertainty is assigned when the committee concludes that there is insufficient data and information for Drakes Estero; observations from other comparable ecosystems are not available; and scientific understanding is insufficient or controversial such that conclusions regarding a possible cause-effect between DBOC actions and a measurable effect can be made only by inference.”*

“Possible” does not mean “likely.” Yet according to Ms. Trainer (p. 2): “*the findings of the NAS ... demonstrate that continued oyster operations would likely result in adverse impacts to harbor seals.*” At a minimum, Ms. Trainer’s statement is an exaggeration of the NAS Report. Taken as a whole, her assertion about the NAS Report is a straw-man argument, claiming I disagreed with something I never cited and never disagreed with because the NAS committee never had access to the USGS Report and Stewart Report, both of which were released *after* the NAS Report. In the end, the NAS concluded that the harbor seal impact from DBOC activities was overstated in the DEIS and had “*high uncertainty.*” Ms. Trainer’s letter is flawed and suffers from selective omissions.

In summary, Ms. Trainer misrepresented the NAS Report.

#### **4. Ms. Trainer Misrepresented the USGS Report**

Ms. Trainer writes (p. 3):

*“The stated purpose of the USGS Report was to evaluate the photographs, not the seals. The report references seal disturbances only to demonstrate that the photographs are of very limited value ...”* (p. 3)

Ms. Trainer misrepresents the scope and purpose of the USGS Report. In the section “*Scientific Value*,” the USGS Report states that it assessed the scientific value of the NPS photographs “*for use in analyses to determine the impacts of human and nonhuman activities on seal habitat, displacement, or disturbance.*”<sup>62</sup> Elsewhere, the USGS Report states that “*photographic sequences*” of certain potential seal disturbances “*were analyzed for incidence*

---

<sup>59</sup> 2012 NAS Report, p. 11.

<sup>60</sup> Id., p. 5.

<sup>61</sup> Id., p. 17.

<sup>62</sup> USGS Report, p. 3.

*and cause of seal disturbance.”*<sup>63</sup> Once again, key facts are omitted by her assertions.

The USGS Report concluded certain stimuli *“could be directly connected, or at least associated with a flushing level of disturbance in the OB seals ...”*<sup>64</sup>

Furthermore, the USGS Report drew the conclusion that *“the protocols used by the NPS camera monitoring program did provide some data that could be used to document gross haulout patterns of seals and some instances of reactions to potential stimuli in the Drakes Estero.”*<sup>65</sup>

In summary, the USGS Report did not just evaluate the quality of the photographs, but went the next step, and drew conclusions from that data concerning sources of disturbance to the harbor seals. And that is precisely what the USGS scientists believed was their mission.

We learn more about the purpose and scope of the USGS Report from the USGS emails obtained in response to a FOIA request.<sup>66</sup> On February 7, 2012, Dr. William Lellis, Deputy Associate Director, Ecosystems, USGS, wrote to Dr. Carrie Blakeslee (USGS):

*“Would you be interested in doing a 4-8 week detail to work with us in Reston on a very high priority animal behavior project starting immediately?”*

*“The NPS needs an evaluation of whether or not the photos can be used to determine disturbance events of seals.”*

*“The NPS needs this analysis done by the end of March to brief Secretary Salazar who needs to make a decision on Wilderness Status for the park.”*

*“This is a high profile project. Very high profile, so we need to put our very best people on it.”*

On February 9, 2012: Dr. Blakeslee replied to Dr. Lellis:

*“I have found quite a bit of information on Point Reyes National Seashore, Harbor seals, and mariculture in Drakes Estero, although I am sure there is still lots more to learn.”*

On March 5, 2012, Dr. Blakeslee wrote to Sally Holl (USGS):

*“I am currently working on a detail to determine if photographs taken by the NPS can be used to determine seal behavior or any changes in their behavior. The analysis must be done quickly because NPS needs to give their final report to Ken Salazar by March 30<sup>th</sup>.”*

On March 13, 2012, Dr. Blakeslee wrote to “everyone” (4 USGS scientists):

*“I forgot to mention this earlier, but if you come across any videos with seals where you believe they have been disturbed (whether due to human activity, or non-human activity) can you please e-mail me the video file name. I have to keep track of those specific videos to be sure they get sent to our marine mammal expert.”*

On April 18, 2012: concerning the outline of the draft USGS Report, Dr. Lellis responded to Dr. Blakeslee:

*“Let’s keep it very simple.”*

---

<sup>63</sup> USGS Report, p. 3.

<sup>64</sup> USGS Report, p. 5.

<sup>65</sup> Id., p. 5.

<sup>66</sup> December 14, 2012, FOIA request to USGS by Cause of Action. USGS responded in early May 2013.

- a. *“Initial analysis by the NPS indicated that the photographs were too x and/or too xxx to be of value in a seal disturbance analysis (citation).”*
- b. *“The MMC studied a small portion of these photographs and concluded that they may be useful for xxx and recommended a more detailed analysis of xxx (citation).”*
- c. *“The USGS was asked by the NPS to conduct an independent review of the photos for value in assessing use in determining cause and frequency of seal disturbance independent of other information with the following objectives (list objectives):”*

In summary, it is clear from the USGS Report and from the USGS emails that the purpose of the USGS analysis was to determine if the NPS photographs were useful for determining the cause of harbor seal disturbances, and if so, to make such a determination. That is completely consistent with the purpose of Dr. Stewart’s analysis as described in the introduction of the Stewart Report<sup>67</sup>:

*“The objective of this effort was review a series of time-lapse photographs of harbor seals hauled out in Drakes Estero, California, to determine if those photographs could be useful for understanding the relationships between harbor seals and human activities in there during an impact assessment by the U.S. National Park Service and the U.S. Geological Service.*

- 1) *Describe specific behaviors of harbor seals that could be detected in time-lapse photographic records to indicate whether seals have been disturbed;*
- 2) *Examine a subset of time-lapse photographic series provided by the USGS and classify them as indicative of disturbance, non-disturbance or not determinable and suggest if causation could be distinguished from simple correlation when apparent disturbance responses by seals occurred when potential disturbing stimuli were also observed; and*
- 3) *Suggest ways to improve photographic methods for documenting interactions between human activities and harbor seals in Drakes Estero using remote monitoring by cameras.”*

Ms. Trainer went on to assert:

*“The USGS Report does not attempt to provide a thorough review of seal disturbances and only a small portion of the photographs were analyzed...” (p. 3)*

That too is a misrepresentation of the USGS Report. It is a similar misrepresentation to what Ms. Trainer wrote to Dr. John Holdren, Director, Office of Science and Technology Policy (OSTP), the White House, on March 6, 2013<sup>68</sup>:

*“Third, Dr. Goodman attempts to buttress his claim with quotes from the research notes of USGS consultant Dr. Brent Stewart, apparently trying to make some argument based on the differences between those notes and the final USGS*

---

<sup>67</sup> Stewart Report, p. 2.

<sup>68</sup> March 6, 2013 letter from Amy Trainer, EAC, to Dr. John Holdren, Director, OSTP, in response to a complaint I submitted to Dr. Holdren on March 4, 2013 that included allegations #1 and #2 from what was ultimately submitted to Secretary Jewell (with two additional allegations) on May 13, 2013. On March 15, 2013, OSTP General Counsel Rachael Leonard told me that OSTP takes these charges seriously. She said OSTP understands concerns about the conflicts-of-interest and lack of independence at Interior, and about the Jarvis Doctrine stating that NPS science is beyond accountability. Nevertheless, she said she was compelled to instruct me to file my complaint with the Department of the Interior.

*Report. However, Dr. Goodman fails to make clear that Dr. Stewart's effort to analyze individual photographs was ultimately superseded by the USGS, for the reasons explained in the Report at pages 2-3 (emphasis ours): "Our initial approach of analyzing a random subsample of all photographs had two significant limitations...As such, we changed our approach to animation of photographs into daily videos." Thus there is no logical basis for Dr. Goodman's reliance on Dr. Stewart's research notes (the "initial approach" improved upon by the USGS)."*

In both Ms. Trainer's March 6 letter to Dr. Holdren and her May 16 letter to Secretary Jewell, she misrepresented the methodology of the USGS analysis, and the role played by Dr. Stewart. As described on pages 2-3 of the USGS Report, the USGS initial plan was to analyze a random subsample of 10 percent of the 165,000 2008 photographs. That plan was quickly abandoned and replaced with a plan to analyze all 165,000 photographs. To this end, videos were made of the photographs from each day. Then pairs of USGS scientists analyzed each daily video, and identified those in which there were potential seal disturbances. Those 83 videos from 46 days were then provided to Dr. Stewart for his expert analysis of the potential cause of the disturbances. In summary, Ms. Trainer is wrong in asserting that Dr. Stewart was part of the initial approach; in fact, as clearly described in the USGS Report, Dr. Stewart provided the key behavioral analysis for the final approach.

Ms. Trainer then went on to assert:

*"The Marine Mammal Commission (MMC), on the other hand, conducted a thorough scientific study regarding disturbances ..."* (p. 3)

This assertion has already been considered above. Dr. Ragen, MMC Executive Director, did not conduct "a thorough scientific study" or a complete analysis of the NPS photographs, and certainly nothing as thorough as what USGS and Dr. Stewart conducted. In fact, the MMC Report recommended that "a fuller examination of the photographs is necessary to form a conclusion with a reasonable level of confidence." That "fuller examination of the photographs" was conducted (twice) by Dr. Brent Stewart, and twice he concluded that the photographs showed no evidence of disturbances attributed to DBOC skiffs.

In summary, Ms. Trainer misrepresented the USGS Report.

## **5. Ms. Trainer Misrepresented the Stewart Report**

Ms. Trainer asserts (p. 4):

*"In an effort to develop a storyline of conspiracy necessary to benefit the Company's advocacy against the Park Service, Dr. Goodman initially (12/21/12 Declaration to Court) attempted to buttress his claims about the USGS Report with quotes from the 5/12/12 research notes of USGS consultant Dr. Brent Stewart, apparently trying to make some argument based on the differences between those notes and the final USGS Report. Dr. Goodman claimed that Dr. Stewart's 5/12/12 notes supported a conclusion that Dr. Stewart found no seal disturbances. But contrary to Dr. Goodman's claim, Dr. Stewart's notes do in fact reflect evidence of a seal disturbance, and other USGS reviewers also found evidence of seal disturbances."*

Ms. Trainer misrepresents the Stewart Report. She mischaracterizes Dr. Stewart's role



and the materials he used for his analysis. Dr. Stewart was the *only* marine mammal expert on the USGS team, as Dr. Lellis confirmed.<sup>69</sup> When asked whether Dr. Stewart provided a spreadsheet with his evaluations, Dr. Lellis responded: “*Yes, essentially that is Appendix 1 of the [USGS] report.*”<sup>70</sup> [As noted above, Dr. Stewart’s evaluation did become Appendix 1 of the USGS report, albeit with one key difference: his conclusion that there was “*no evidence*” of disturbance on May 15, 2008 was omitted. Dr. Stewart never reviewed the final version of Appendix 1 of the USGS report.]

Dr. Stewart was listed as a co-author of the USGS Report. He evaluated all of the videos of potential disturbances used in the USGS Report. While Dr. Stewart’s original May 2012 report found evidence of harbor seal disturbances (e.g., caused by kayakers), he found no evidence that DBOC oyster boats *caused* a harbor seal disturbance. Furthermore, in his Dec. 10, 2012, Supplemental Report, Dr. Stewart re-reviewed both May 15, 2008 and June 11, 2008 photographs, and again concluded no evidence of disturbance.

Ms. Trainer misrepresents the facts. It is a simple story in which the NPS FEIS misrepresented the USGS Report, and the USGS Report misrepresented the Stewart Report.

Ms. Trainer then goes on to misrepresent Dr. Stewart’s December 10, 2012 Supplemental Report. She writes:

*“But subsequent to the publication of the USGS Report, Dr. Stewart looked again at the June 11, 2008 photos and seemingly changed his opinion that a disturbance had occurred. Dr. Stewart has the right to change his mind, however, that by itself does not impact the overall review done by the USGS which concurred with Dr. Stewart’s prior opinion. Further, that seeming change of opinion of one author of the USGS Report does not warrant a withdrawal of that Report given that there was admittedly some “back-and-forth” given the limitation of the USGS Report due to the poor quality of the photos.”*

Ms. Trainer has not read or does not understand the record. It is puzzling how Ms. Trainer can conclude that Dr. Stewart changed his mind. Nothing could be further from the truth. In his original May 3, 2012 report, concerning the June 11, 2008 photographs, he concluded “*no obvious disturbance.*” In his December 10, 2012 Supplemental Report, Dr. Stewart came to the same conclusion when he wrote:

*“No response of seals apparent from 1126 hrs until end of sequence at 1151 hrs. The minor startle of seals unexplained, but I don’t consider this to be a flush but rather likely a startle of most seals owing to a sudden movement or startle of one or two seals with or without external stimulus.”*

Remarkably, Dr. Stewart was consistent in his two reports, but somehow Ms. Trainer misrepresents the second report as a “*change of mind.*” One thing is for certain: in

---

<sup>69</sup> December 4, 2012, email from USGS Dr. Lellis to Dr. Goodman, in response to Dr. Goodman’s December 3, 2012 email questions “*What role did the scientist from Hubbs-SeaWorld play compared to the USGS scientists? Why did you turn to an outside scientist? Was he your major expert in harbor seal behavior?*” Dr. Lellis replied “*Photographs of potential flushing events and human activities were sent to Brent Stewart for analysis. As you noted, Brent was the harbor seal behaviorist on this project.*”

<sup>70</sup> In a December 5, 2012 email from Dr. Lellis to me, he responded to my request for a copy of the Stewart Report by confirming that Appendix 1 was essentially the Stewart Report, and by not providing a copy of the Stewart Report and spreadsheet. I asked him again by phone on December 7, and by email on December 11 & 13. Dr. Lellis never provided Dr. Stewart’s report.

contrast to Ms. Trainer's assertion, Dr. Stewart did not change his mind – he twice found no evidence of disturbance.

In summary, Ms. Trainer misrepresented the Stewart Report.

## 6. Ms. Trainer Misrepresented the Secretary's Decision

Concerning Secretary Salazar's decision, Ms. Trainer writes:

*"Further since the Secretary made his decision on matters having nothing to do with harbor seal science or the USGS Report, Dr. Goodman cannot blame USGS or the NPS. The USGS Report concluded that the NPS photos alone were of limited use to determine harbor seal flushes. Dr. Goodman would have the public believe that the USGS analysis limited to these poor-quality photos is not only an exhaustive compilation of all seal disturbances, but further that the thousands of NPS photos that show nothing but gray or black due to fog or operator error are definitive proof purportedly evidencing that oyster boats were not associated with any disturbances. Now Dr. Goodman asserts that these poor quality NPS photos formed the basis for the Secretary's decision. Such an approach by Dr. Goodman confirms his obsession to advocate on behalf of Company, even when neither the evidence nor the peer-reviewed science supports his regurgitated allegations."*

As stated earlier in this letter, Ms. Trainer misrepresents the Secretary's decision. In his decision memo of November 29, 2012, Secretary Salazar wrote: "... the DEIS and FEIS support the proposition that the removal of DBOC's commercial operations in the estero would result in long-term beneficial impacts to the estero's natural environment."<sup>71</sup> He wrote that the DEIS and FEIS "have informed me... and have been helpful to me in making my decision."

Moreover, the USGS emails obtained from the USGS in response to a FOIA request make clear that the USGS Report (based upon the Stewart Report) was critical to the process of informing the Secretary's decision.

What this timeline in the USGS emails shows is that the USGS analysis of the NPS photographs relied on outside harbor seal behavior expert Dr. Brent Stewart from Hubbs-SeaWorld Research Institute. Moreover, it was not just a small, technical part of the NPS FEIS. Rather, it was a "very high profile" project that had "very high priority" because it was needed for NPS "to brief Secretary Salazar who needs to make a decision on Wilderness Status for the park."<sup>72</sup>

A key author of the USGS Report wrote that "the analysis must be done quickly because NPS needs to give their final report to Ken Salazar by March 30<sup>th</sup>."<sup>73</sup> The USGS analysis involved officials at the very highest level of the Department of the Interior.

While the public was told that the USGS analysis was done independently, the emails reveal that NPS was intimately involved and "chomping at the bit,"<sup>74</sup> "breathing down my neck,"<sup>75</sup> and needed it done because "they've got deadlines for deciding on the permit."<sup>76</sup> NPS

---

<sup>71</sup> Secretary Salazar's November 29, 2012 decision memo concerning the DBOC permit, p. 5.

<sup>72</sup> Email from USGS Dr. William Lellis to USGS Dr. Carrie Blakeslee, February 7, 2012.

<sup>73</sup> Email from USGS Dr. Carrie Blakeslee to USGS Sally Holl, March 5, 2012.

<sup>74</sup> Email from USGS Dr. Laurie Allen to Hubbs-SeaWorld Dr. Brent Stewart, April 20, 2012.

<sup>75</sup> Email from USGS Dr. Laurie Allen to Hubbs-SeaWorld Dr. Brent Stewart, May 1, 2012.

<sup>76</sup> Email from USGS Dr. Laurie Allen to Hubbs-SeaWorld Dr. Brent Stewart, April 20, 2012.

was constantly in the loop as USGS staff wrote of “*keeping the department informed.*”<sup>77</sup> The analysis of the photos was kept “*on the fast track*”<sup>78</sup> because it was needed to inform the Secretary for his decision.

In the end, who was briefed? Nearly five months prior to when both the NPS FEIS and USGS Report was released to the public, the following three people apparently were briefed about the USGS findings: USGS Director Dr. Marcia McNutt, Assistant Secretary Anne Castle (who oversees USGS and reports to the Secretary), and Assistant Secretary Rachel Jacobson (who oversees NPS and reports to the Secretary).<sup>79</sup>

The USGS analysis of the NPS photos, based upon Dr. Brent Stewart’s analysis, was apparently presented to two Assistant Secretaries (Anne Castle, Asst. Secretary for Water & Science; and Rachel Jacobson, Acting Asst. Secretary for Fish & Wildlife & Parks) in early July to help inform the Secretary’s decision. These emails suggest that the Secretary’s decision was indeed informed by the science. It seems likely that the two Assistant Secretaries were presented the same misrepresentations found in the USGS Report.

When Dr. Brent Stewart filed his report on May 3, 2012 with USGS, he found “*no evidence of disturbance*” of harbor seals by DBOC. When the USGS Report was released to the public nearly seven months later in November, it claimed Dr. Stewart found two examples of correlations of disturbances with DBOC boats, and when the NPS FEIS was released to the public in the same month, it claimed the USGS Report found two examples of causation of disturbances by DBOC boats.

In summary, Ms. Trainer misrepresented the Secretary’s decision.

## 7. Summary and Conclusions

Ms. Trainer’s letter misrepresents the NPS FEIS, the NAS Report, the MMC Report, the USGS Report, the Stewart Report, and the Stewart Supplemental Report. Ms. Trainer’s document mischaracterizes every report she cites, including reports from the NAS, MMC, NPS, USGS, and Hubbs-SeaWorld Research Institute.

This is not the first time Ms. Trainer misrepresented facts concerning NPS science to government officials<sup>80</sup> and the Federal Court<sup>81</sup>; her latest letter is part of a repeated pattern made since 2010, when she first moved to West Marin.

President Obama stated: “... *the days of science taking a back seat to ideology are over.*”<sup>82</sup> Ms. Trainer apparently disagrees with the President’s policy. You and I are scientists by training and as such, our reliance on data is core to how we analyze problems. In

---

<sup>77</sup> Email from USGS Dr. Laurie Allen to USGS Dr. Carrie Blakeslee, June 18, 2012.

<sup>78</sup> Email from USGS Dr. Laurie Allen to USGS Dr. Carrie Blakeslee, May 15, 2012.

<sup>79</sup> Email from USGS Dr. William Lellis to USGS Dr. Carrie Blakeslee, June 25, 2012; and email from USGS Hannah Hamilton to USGS Dr. William Lellis, June 26, 2012.

<sup>80</sup> March 6, 2013 letter from Amy Trainer, EAC, to Dr. John Holdren, Director, OSTP, in response to a complaint Dr. Goodman submitted to Dr. Holdren on March 4, 2013.

<sup>81</sup> Environmental Action Committee, December 28, 2012, declaration in U.S. District Court, Northern California District, p. 11, misrepresented the scope and methodology of USGS and Stewart Reports when they claimed that Dr. Stewart’s analysis “*appears to be based on the report’s “initial approach” of evaluating only a subsample of the photographs, an approach that USGS itself rejected in favor of a video analysis*” when in fact Dr. Stewart analyzed the USGS videos involved in the final approach.

<sup>82</sup> President Obama’s April 27, 2009 speech to the National Academy of Sciences.

contrast, for Ms. Trainer, a professional public-policy advocate, the ends apparently justify the means. What we as scientists rely on as facts and data, she sees as simply fungible inconveniences. If facts get in her way, they can be changed. In her letter, Ms. Trainer misquotes every study and report she cites, including several by your Department. If those sound like strong statements, I invite you to check Ms. Trainer's citations for yourself and draw your own conclusions as to the veracity of her claims.

Given the EAC letter, I encourage you to ask four questions in considering whether the views of professional public-policy advocates who are attorneys (not scientists) should play a role in your scientific deliberations.

- 1) Why are surrogates doing the bidding for federal agencies? The NPS and USGS, and their respective Scientific Integrity Officers, should speak for themselves.
- 2) Why aren't the federal agencies coming forward and embracing – in full openness and transparency – the proposal to review their science?
- 3) Why aren't federal agencies welcoming an open process of independent scientists adjudicating these issues, especially since they appear so convinced I am wrong?
- 4) Why are the surrogates of these federal agencies trying to stop you from overseeing an open scientific review? If they truly believe that the science supports their claims, why wouldn't they welcome such a review to confirm whether they are correct?

These sorts of non-scientific attacks on what I have submitted to you compel me to ask you once again to take three actions.

I respectfully request the following:

- (1) We meet so I can present the allegations and propose a proper investigation.
- (2) The DOI establish a blue-ribbon panel of eminent scientists to conduct this investigation, bypassing its conflicted SIOs and conflicted outside contractors.
- (3) The panel investigates these allegations in a transparent fashion, allowing both sides to respond to statements made by the other in an open respectful fashion.

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

Sincerely yours,



Corey S. Goodman, Ph.D.

corey.goodman@me.com

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