

Appendix 1:
Overview of Allegations of Scientific Misconduct

Table of Contents

1. Summary of Allegations of Scientific Misconduct2-4

2. Documents and Communications Supporting These Allegations4-5

3. Allegations #1 & #2: USGS & NPS Misrepresented the Stewart Report5-15

4. Allegation #3: USGS & NPS Used False Science to Brief the Secretary15-18

5. Allegation #4: Dr. Stewart Re-Reviewed Key Data, Confirmed Initial Findings of No
Evidence of Disturbance, & USGS Covered Up His Report18-21

1. Summary of Allegations of Scientific Misconduct

The four allegations of misconduct, involving two DOI agencies, are:

1. **USGS**, in its USGS Report on their analysis of the NPS photographs concerning the oyster farm at Drakes Estero, misrepresented the record from the Stewart Report (by Hubbs-SeaWorld Research Institute harbor seal behavior expert Dr. Brent Stewart), falsely claimed a *correlation* of oyster farm activity and disturbance of harbor seals based upon Dr. Stewart finding of *no evidence of disturbance*, and in so doing violated the DOI Scientific Integrity Policy.
2. **NPS**, in its Final EIS (FEIS) concerning the oyster farm at Drakes Estero, misrepresented the USGS Report, falsely claimed *causation* of oyster farm activity and disturbance of seals based upon the USGS Report finding of a *correlation* (in turn based upon Dr. Stewart's finding of *no evidence of disturbance*), leading to an overall finding in the NPS FEIS of a *moderate adverse impact*, and in so doing violated the DOI Scientific Integrity Policy.
3. **USGS** and **NPS**, in their claims that the USGS analysis of the NPS photographs was *very high profile* and *very high priority*, and *needed to inform Secretary Salazar* for his decision on the oyster farm permit, apparently *briefed Assistant Secretaries Castle and Jacobson* with false claims of evidence of oyster farm disturbances of seals in Drakes Estero, and in so doing violated the DOI Scientific Integrity Policy.
4. **USGS**, after its Report was released, requested a subsequent re-review of key data by Dr. Stewart in his *Supplemental Report* that confirmed his earlier finding of *no evidence of disturbance*, a 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 high profile decision, but instead was covered up, and in so doing violated the DOI Scientific Integrity Policy.

On November 20, 2012, NPS released the NPS Final Environmental Impact Statement (FEIS) for the Drakes Bay Oyster Company (DBOC) Special Use Permit. The FEIS concluded that continuation of the oyster farm would result in a long-term "*moderate adverse impact*" on harbor seals due to the "*potential for disturbances*" and "*continued disturbances*" caused by DBOC oyster boats.

A "*moderate*" adverse impact is defined as "*impacts on harbor seals would result in readily apparent effects on the population, natural processes, or habitat in the project area.*" It is the second most serious category of adverse impacts.

This single determination of a "*moderate adverse impact*" on the harbor seals at Drakes Estero had a significant impact on other findings in the FEIS, and on Secretary Salazar, other top leaders at Interior, elected officials, the public, and media. After six years of false public claims, manipulated reports, and secret cameras – and millions of taxpayer dollars – NPS claimed that an independent analysis by USGS of NPS photographs supported this finding.

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

The NPS FEIS claimed evidence that the oyster farm occasionally disturbed harbor seals. This finding was inconsistent with the physical landscape: the oyster boats typically stay over 700 yards away from the harbor seals, with an intervening sandbar blocking their

view and buffering their sound, while the NOAA and NPS recommendations and protocols call for a 100 yard buffer (facts not disclosed in the FEIS).

NOAA, the agency charged with overseeing the Marine Mammal Protection Act of 1972, recently concluded the harbor seal population in and around Drakes Estero is at or near its carrying capacity. During the Draft EIS (DEIS) comment process, NOAA, the federal agency responsible for administration of the Marine Mammal Protection Act, reported to NPS, in their comments on the DEIS, that their agency had not received reports of harbor seal disturbances by the oyster farm in Drakes Estero.

What data supported the NPS finding in the FEIS of oyster farm disturbances of seals?

The NPS cited a 2012 USGS Report that analyzed, at NPS request, a large subset (165,000 photos from the 2008 harbor seal pupping season) of the over 300,000 time- and date-stamped NPS photographs of the oyster boats and harbor seals (from secret cameras operational for three and one-half years from 2007 to 2010). The FEIS quoted the USGS Report as concluding that on two occasions in 2008, oyster boats caused seals to flush into the water.

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

The USGS Report did not conclude what the NPS claimed. Rather, USGS found an "*association*" (a weak correlation) and not causation of oyster boats and harbor seals getting flushed into the water (a major disturbance) on these two occasions. The USGS had no harbor seal behavior expert, and so relied on an analysis of NPS photos, as contracted by NPS, conducted by Dr. Brent Stewart, a harbor seal behavior expert at Hubbs-SeaWorld Research Institute in San Diego (the 2012 Stewart Report). The USGS Report quoted the Stewart Report as finding two "*associations*" of oyster boats and harbor seals getting flushed into the water (on May 15 and June 11, 2008).

The Stewart Report did not conclude what the USGS claimed. Rather, Dr. Stewart found "*no evidence of disturbance*" of harbor seals by the oyster farm on both of these dates. A review of his spreadsheet, submitted to both NPS and USGS, confirms his clarity for these two dates. The USGS Report misrepresented the Stewart Report, claiming a correlation where Dr. Stewart found none, and then the NPS FEIS misrepresented the USGS Report, claiming causation where the USGS claimed a weak correlation.

In this way, a finding of "*no evidence of disturbance*" was transformed into a finding of *causation* ("*attribution*") that led to a finding in the FEIS of "*moderate adverse impact.*"

Was this a clerical error in copying Dr. Stewart's spreadsheet from one report to another? Unlikely. Consider:

- (i) The evidence for *serial misrepresentations* of disturbances in the Stewart, USGS, and NPS FEIS Reports – the USGS misrepresented the Stewart Report, and then the NPS misrepresented the USGS Report (allegations #1 and #2);
- (ii) The *history* of repeated NPS false claims of harbor seal disturbances by the oyster farm since 2007;
- (iii) That this is the *only* evidence for such disturbances over the past six years;
- (iv) That this was a *high priority project* that apparently led to briefings of two Assistant Secretaries of Interior to inform the Secretary's decision (allegation #3); and

- (v) The cover-up of the subsequent Supplemental Report by Dr. Stewart (requested by USGS) confirming his initial finding of no seal disturbances by the oyster farm (on May 15 and June 11, 2008) (allegation #4).

It is alleged that the “*preponderance of evidence*” (as defined by the DOI and White House Scientific Integrity Policies) leads to the conclusion that these serial misrepresentations and cover-up by USGS and NPS were committed “*intentionally, knowingly, or recklessly.*” False science was used to inform the Secretary for a high profile policy decision. The Secretary, public, and federal court were deceived.

2. Documents and Communications Supporting These Allegations

My analysis leading to these four allegations was based upon:

- i. Dr. Stewart’s May 12, 2012 report and spreadsheet analysis (together the Stewart Report) submitted to NPS (submitted to USGS on May 3). These documents were obtained from Dr. Stewart at Hubbs-SeaWorld Research Institute. The November 26, 2012 USGS Report with Appendix 1 based on Dr. Stewart’s Report (together the USGS Report).
- ii. The November 20, 2012 NPS FEIS, which relied on the USGS Report and Stewart Report.
- iii. USGS emails obtained in response to a FOIA request (“2013.5.7 Batch #1.pdf”) submitted to USGS on December 14, 2012 by Cause of Action, a Washington D.C. non-profit. These documents were obtained on May 8.
- iv. Emails between USGS Dr. William Lellis (Deputy Associate Director, Ecosystems, and senior author of USGS Report) from December 3 to 13, 2012 (see below).
- v. Contemporaneous notes from a phone conversation between USGS Dr. Lellis and me on December 7, 2012 (see below).
- vi. A Supplement Report filed by Dr. Brent Stewart with Dr. Carrie Blakeslee on December 10, 2012 (“BSS Suppl review.pdf”) in response to a USGS request on December 5 that Dr. Stewart re-review the photographs for May 15 and June 11, 2008. This document was obtained from Dr. Stewart on May 9 after I requested the documents he provided to Dr. Stephanie Owens, NOAA Sea Grant Knauss Fellow working for Congressman Jared Huffman, on April 30, 2013 in response to her request for documents on April 29, 2013.

I thank Dr. Brent Stewart, Hubbs-SeaWorld Research Institute, and Cause of Action for supplying me with these documents.

It is important to note that several requests made to USGS Dr. Lellis in December (both by email and telephone) for copies of Dr. Stewart’s May 2012 Report were not answered. Moreover, Dr. Lellis never told me that while we were having our discussions from December 3 to 13, 2012, that he and Dr. Blakeslee requested a re-review of the May 15 and June 11, 2008 data by Dr. Stewart on December 5, and that Dr. Stewart responded with his Supplemental Report on December 10. I did not know the existence of the Supplemental Report until after it was provided to Congressman Huffman’s office on April 30 (as requested by staffer Dr. Owen) and subsequently provided to me on May 9, 2013.

To my knowledge, the existence of this Supplemental Report (enclosed here as a supporting document and discussed below) has not been publicly disclosed prior to the filing this scientific misconduct complaint on May 13, 2013.

It is important to note that the May 2013 USGS response to the FOIA request did not include the USGS email requesting Dr. Stewart's re-review on December 5, Dr. Stewart's December 10 Supplemental Report, or his transmittal email back to USGS, even though the two emails and Report should have been included in the response. USGS did not indicate that anything had been withheld in their response to the FOIA request. This raises serious questions as to whether the Report and emails were withheld (in violation of FOIA), or alternatively, whether the USGS staff used private email addresses (rather than their official USGS email addresses) to contact Dr. Stewart and seek his re-review of the May 15 and June 11, 2008 photographs. Either alternative is troubling given the high profile of this issue, and the importance of Dr. Stewart's Report.

Early in this investigation, Interior should determine why these materials were not provided in response to the FOIA request, and whether private email addresses were used for these communications. If so, then Interior should investigate what other communications within USGS, between USGS and NPS, and between USGS and others used private email addresses so as to avoid disclosure under FOIA.

3. Allegations # 1 & # 2: USGS & NPS Misrepresented the Stewart Report

1. **USGS**, in its USGS Report on their analysis of the NPS photographs concerning the oyster farm at Drakes Estero, misrepresented the record from the Stewart Report (by Hubbs-SeaWorld Research Institute harbor seal behavior expert Dr. Brent Stewart), falsely claimed a *correlation* of oyster farm activity and disturbance of harbor seals based upon Dr. Stewart finding of *no evidence of disturbance*, and in so doing violated the DOI Scientific Integrity Policy.
2. **NPS**, in its Final EIS (FEIS) concerning the oyster farm at Drakes Estero, misrepresented the USGS Report, falsely claimed *causation* of oyster farm activity and disturbance of seals based upon the USGS Report finding of a *correlation* (in turn based upon Dr. Stewart's finding of *no evidence of disturbance*), leading to an overall finding in the NPS FEIS of a *moderate adverse impact*, and in so doing violated the DOI Scientific Integrity Policy.

These two allegations of scientific misconduct are interconnected, and arise from an analysis of the scientific basis for the claim made in the NPS Final Environmental Impact Statement (FEIS) for the Drakes Bay Oyster Company (DBOC) Special Use Permit, released by the National Park Service (NPS) on November 20, 2012, that continuation of the oyster farm would result in a long-term "*moderate adverse impact*" on harbor seals due to the "*potential for disturbances*" and "*continued disturbances*" caused by DBOC oyster boats (FEIS, pg. 377).

In particular, these allegations are based on the scientific analysis submitted to NPS and the U.S. Geological Survey (USGS) by Hubbs-Sea World Research Institute (HSWRI) harbor seal behavior expert Dr. Brent Stewart, who was contracted by NPS to perform a third-party review of NPS photographs of harbor seal behavior in Drakes Estero (FEIS, pg. 371), to provide that analysis of the NPS photos to both NPS and USGS.

My findings are summarized in the following five conclusions:

- 1) The May 2012 Stewart Report (contracted by NPS, and submitted to NPS and USGS) concluded that there was no evidence that DBOC oyster boats caused disturbances of harbor seals in the NPS photographs reviewed (165,000 photographs taken during the 2008 harbor seal pupping season) (Stewart Report, spreadsheet). The key words were “*no evidence of disturbance.*”
- 2) The November 2012 USGS Report based on the Stewart Report did not have scientific evidence to conclude that two flushing disturbances of harbor seals were “*associated with [DBOC] boat activity*” (USGS Report, pg. 3) because the Stewart Report found no such association and no evidence for DBOC disturbances (Stewart Report, spreadsheet).
- 3) The FEIS lacked the scientific evidence to conclude that two flushing disturbances of harbor seals were “*attributed*” (another word for causation) to DBOC boats because the FEIS relied on both the USGS Report and the Stewart Report, neither of which found a cause-and-effect relationship between flushing disturbances and DBOC’s oyster boats (FEIS pg. 376). In fact, the Stewart Report found no evidence for DBOC disturbances.
- 4) Dr. Stewart’s finding of no harbor seal disturbances by DBOC oyster boats was transformed by two sequential misrepresentations — the first by USGS and the second by NPS — from a finding of no evidence of DBOC boat disturbances of harbor seals to the cause-and-effect conclusion made in the FEIS.
- 5) In summary, the FEIS lacked the scientific evidence to conclude that continuation of the oyster farm would result in a long-term “*moderate adverse impact*” on harbor seals due to the “*potential for disturbances*” and “*continued disturbances*” caused by DBOC oyster boats (FEIS, pg. 377).

NPS Conclusions Regarding DBOC Seal Disturbances in the FEIS

In response to criticism that the Draft EIS (DEIS) failed to analyze over 300,000 NPS photographs of harbor seal haul-out areas in Drakes Estero, the NPS turned to the USGS to provide a third-party review of those photographs.

“... NPS initiated a third-party review of the photographs with the USGS, in consultation with a harbor seal specialist with the Hubbs-Sea World Research Institute. The USGS assessment (Lellis et al. 2012) focused on the 2008 harbor seal pupping season, when more than 165,000 photos were collected from two sites overlooking Drakes Estero between March 14, 2008 and June 23, 2008.”
(FEIS, pg. 371)

The NPS conclusion in the FEIS of a “*moderate adverse impact*” to harbor seals by DBOC operations appears to be based in large part upon the NPS’s interpretation of the USGS assessment of NPS photographs, entitled “*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, United States Geologic Survey (Open-File Report 2012-1249) (USGS Report) (FEIS, pgs. 376-377).

The USGS Report in turn was based in large part upon a NPS commissioned third-party evaluation of the NPS photographs by Dr. Brent Stewart, Ph.D., J.D., Senior Research Scientist at the Hubbs-SeaWorld Research Institute (HSWRI), entitled “*Evaluation of Time-Lapse Photographic Series of Harbor Seals Hauled Out In Drakes Estero,*

California, For Detecting and Assessing Disturbance Events,” Technical Report 2012-378, submitted to the NPS, on May 12, 2012 (Stewart Report) (Technical Report 2012-378). In its discussion of the USGS Report in the FEIS, NPS wrote:

“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 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.” (FEIS, pgs. 376-377).

It is noteworthy that NPS found that the USGS Report “*attributed*” two seal “*flushing disturbance events . . . to [DBOC] boat traffic at nearby sand bars . . .*” (FEIS, pg. 376). In this sense, “*attributed*” appears to refer to a cause-and-effect relationship (i.e., causation).

The NPS reference to “*MMC 2011b*” in the quote above is a reference to the Marine Mammal Commission’s November 22, 2011 report, entitled “*Mariculture and Harbor Seals in Drakes Estero, California*” (MMC Report). After reviewing NPS records prepared by volunteers and the NPS photographs at issue here, the MMC Report concluded that, “*from time to time, shellfish operation activities have disturbed the seals*” (MMC Report, pg. ii). The MMC Report described a potential DBOC oyster boat disturbance on May 15, 2008, based upon analysis of the NPS photographs, and advised that “[*a*] *fuller examination of the photographs is necessary to form a conclusion with a reasonable level of confidence.*” (*Id.*, pgs. 26-27).

Thus, according to NPS, the USGS Report validated the MMC finding of a DBOC disturbance on May 15, 2008. According to the NPS FEIS, there were now two independent verifications – one by MMC and the other by USGS – of a DBOC oyster boat disturbance to harbor seals on May 15, 2008.

Based upon the combined assessments of the MMC and the USGS reports, the NPS concluded that continuation of the oyster farm would result in a long-term “*moderate adverse impact*” on harbor seals due to the “*potential for disturbances*” and “*continued disturbances.*” (FEIS, pg 377).

“Association”: USGS Report Claimed a Weak Correlation of DBOC Boats with Two Harbor Seal Flushing Events

All of the authors of the USGS Report are USGS employees except for Dr. Brent Stewart, Ph.D., J.D., Senior Research Specialist, a harbor seal behavioral expert from the Hubbs-SeaWorld Research Institute, who was hired under contract with NPS to analyze the USGS-prepared videos composed of the series of photographs of potential harbor seal

disturbance events from the 2008 NPS photographs.

The USGS Report summarized its methodology and findings in this way:

“Photographic sequences of each event, plus the 10 photographs before the start of each event and the 10 photographs after the end of each event (3,140 photographs total) were analyzed for incidence and cause of seal disturbance. Ten of the 75 events were classified as containing behaviors indicative of disturbance in the form of flushing (table 1, figs. 2-11, appendix 1). Two flushing events were associated with the presence of a kayak, two were associated with birds landing in the area, two were associated with boat activity, and four occurred when no obvious stimuli were visible within the field of view of the camera.” (USGS Report, pg. 3).

Thus, the USGS Report associated two flushing disturbance events with DBOC boats. The USGS also reported that over 40 reviewed instances of DBOC boat visits to the adjacent sand bar did not cause a disturbance of the harbor seals (*Id.*, pg. 5).

Later in the report, the USGS Report concluded that a *“flushing level of [harbor seal] disturbance”* on May 15, 2008, and June 11, 2008, *“could be directly connected, or at least associated with ... [DBOC] boat traffic at nearby sandbars ...”* (USGS Report, pg. 5).

This statement in the USGS report is misleading. The USGS wrote that the stimuli (kayaks, birds, and DBOC boats) *“could be directly connected, or at least associated with a flushing level of disturbance in the OB seals ...”* (*Id.*). When the entire USGS Report is carefully reviewed, it becomes clear that the USGS Report concluded that several disturbance events can be directly connected to kayaks and birds, but that the two disturbance events are only *“associated”* — i.e., weakly correlated with, but not caused by — DBOC oyster boats.

This statement in the text of the USGS Report is contradicted by analysis of Appendix 1 in the USGS Report which summarized Dr. Stewart’s research analysis (i.e., his spreadsheet) used to reach the conclusions in the main report. In fact, Appendix 1 contradicts the USGS Report’s conclusion on June 11, 2008 that an oyster boat was at least associated with a disturbance. That is so because Appendix 1 observed in the *“Connection Between Stimulus and Seal Flushing”* column, *“Minor flushing before boat arrival, cause unknown,”* and described the event in detail in the *“Comments”* as follows: *“Boat visits area; people walking; very poor camera focus; rafting birds scattered; brief movement of seals toward water’s edge several minutes before boat arrives but none seen to enter water; **no obvious disturbance to seals”*** (USGS Report, pg. 24; Appendix 1, June 11, 2008, emphasis added).

With respect to May 15, 2008, Appendix 1 does not document any evidence of a harbor seal disturbance caused by DBOC oyster boats. Appendix 1 provides no conclusion in the *“Connection Between Stimulus and Seal Flushing”* column, and described the event as follows: *“Boat visits area; people walking; very poor camera focus; some seals flush into water just after boat leaves the area”* (USGS Report, pg. 23, Appendix 1, May 15, 2008).

Accordingly, Appendix 1 of the USGS Report does not support the report’s finding of an *“association”* between DBOC oyster boats and harbor seal flushing events on May 15, 2008, or June 11, 2008.

***“No Evidence of Disturbance”*: Hubbs-SeaWorld Report Found No Evidence of Harbor Seal Disturbance by DBOC Oyster Boats**

As described in the FEIS, the USGS worked “... *in consultation with a harbor seal specialist with the Hubbs-SeaWorld Research Institute*” (FEIS, pg. 371). That expert was Dr. Stewart, the Hubbs-SeaWorld Research Institute harbor seal behavior specialist. Dr. Stewart is a named author on the USGS Report.

Between December 3 and 13, 2012, I exchanged a series of emails with Dr. William Lellis, Deputy Associate Director, Ecosystems, USGS, and senior author of the USGS Report, regarding the report (enclosed here). I had a 90-minute phone call with Dr. Lellis on December 7, 2012 (notes enclosed here). In those communications Dr. Lellis confirmed three key points regarding Dr. Stewart’s role in the preparation of the USGS Report:

- 1) Dr. Stewart was the harbor seal behavior expert on the USGS review of NPS photographs (none of the other USGS scientists had this expertise – they relied on Dr. Stewart);
- 2) Dr. Stewart’s work provided the analysis on a spreadsheet to determine if there was an *association* (according to USGS, a weak correlation), and if so, whether there was a cause-and-effect relationship between a harbor seal flushing disturbance and a specific stimulus, and
- 3) Dr. Lellis confirmed that Dr. Stewart’s work was presented in specific columns in Appendix 1 in the USGS Report. He told me that Appendix 1 represented Dr. Stewart’s analysis. When I wrote on December 5 and asked him for a copy of Dr. Stewart’s Report, he replied: “*Yes, essentially that is Appendix 1 of the report.*”

I acquired Dr. Stewart’s May 12, 2012 report and spreadsheet with his supporting analysis (together the Stewart Report), as submitted to NPS and USGS, by requesting it directly from the Hubbs-SeaWorld Research Institute.

Dr. Stewart wrote in his report that he evaluated time-lapse NPS photographic records provided to him by USGS “*to determine if there were disturbances to harbor seals and if there were correlative potential human related stimuli recorded in the photographs*” (Stewart Report, pg. 1).

Dr. Stewart’s written report is brief — only two pages. The supporting analysis for the conclusions in his report is found in the accompanying Excel spreadsheet, which was reproduced by USGS as several columns in Appendix 1 of the USGS Report.

After reviewing the time-lapse photographs, Dr. Stewart focused on three disturbance events where the potential stimulus of an oyster skiff (DBOC oyster boat) was present. After analyzing each of the three events, Dr. Stewart concluded that none of the events were determined to have been caused by or attributed to the presence of an oyster skiff:

“Four of those disturbance events corresponded with potential stimuli nearby, once when a kayak was present and three times when a skiff was present. The disturbance event associated with the kayak appears to have been directly caused by the close presence of the kayak and the seals’ detection of it. One disturbance reaction of seals correlative with the presence of a skiff beached on mud flats several hundred meters away can not [sic] be causally linked to human presence as no humans were in the field of view of the camera when the seals’ movements occurred. Another movement of seals toward the water (but where none entered the water) occurred several minutes before a skiff was observed in the area and could not be determined [to] have been caused by [a] skiff’s presence in the area.”

The third disturbance event occurred when a skiff and people associated [with] it were within the field of view of the camera and several hundreds meters away from the seals; that event was difficult to attribute directly to human presence because the seals appeared to respond to birds that had evidently flushed from an area near the camera site rather than near the persons working near the skiff. There was no identifiable stimulus source for each of the other three disturbance events.” (Stewart Report, pg. 2).

More detailed information is provided in Dr. Stewart’s Excel spreadsheet entitled, “*Drakes Estero Harbor Seals HSWRI.xlsx*”, which provides the detailed analysis he summarized in his report. Dr. Stewart’s notes for May 15, 2008, and June 11, 2008, the two dates the USGS Report found a flushing disturbance was “*associated*” with DBOC’s oyster skiffs, contradict the USGS Report’s findings. Dr. Stewart found no evidence for DBOC disturbances. [Note: the version of Dr. Stewart’s spreadsheet provided on April 30, 2013 to Dr. Owen in Congressman Huffman’s office is entitled: “*Drakes Estero Harbor Seals HSWRI Revised.xlsx*.” I do not know what if anything has been revised, but the entries for May 15 and June 11, 2008 remain the same, including the spelling mistakes.]

May 15, 2008. The most important insight from Dr. Stewart’s spreadsheet is that this date is NOT one of his seven disturbance events evaluated in the body of his report (although June 11, 2008 is one of the seven).

In the section “*Stimuli and disturbances*” of Dr. Stewart’s spreadsheet, he wrote the following about the May 15, 2008 photographs:

“very poor camera focus; skiff visits; no evidendence [sic] of disturbance to seals” (Stewart Report, spreadsheet, May 15, 2008)

Dr. Stewart’s conclusion was clear. The NPS photographs from May 15, 2008, contained no evidence of disturbance to seals. Dr. Stewart acknowledged the presence of the DBOC “*skiff*,” but wrote “*no*” in the column titled “*evidence of disturbance to seals*.”

For most dates, the USGS Report’s Appendix 1 accurately represented the analysis presented in Dr. Stewart’s Excel spreadsheet. I confirmed by comparison that the Appendix accurately reflects Dr. Stewart’s Excel spreadsheet for over 40 individual dates. On May 15, 2008, however, there is a striking divergence in Appendix 1 from Dr. Stewart’s spreadsheet. The USGS Report Appendix 1 entry for May 15, 2008, was re-written, and excluded Dr. Stewart’s conclusion, “*no evidendence [sic] of disturbance to seals*.” Thus, the USGS Report appears to have misrepresented Dr. Stewart’s findings for May 15, 2008.

June 11, 2008. Dr. Stewart found “*no obvious disturbance*” in the photographs for June 11, 2008. On his spreadsheet, he wrote:

“very poor camera focus; rafting birds scattered; skiff visits; brief movement of seals towards waters edge several minutes before skiff arrives but none seem to enter water; no obvious disturbance” (Stewart Report, spreadsheet, June 11, 2008)

In his spreadsheet, Dr. Stewart acknowledged the presence of the DBOC “*skiff*,” and wrote “*yes, minor before skiff arrival*” in the column noting “*evidence of disturbance to seals*.” He concluded that there was no evidence that the DBOC

oyster boat caused the disturbance, and thus, did not attribute it to the DBOC oyster boat, but rather wrote, “*no obvious disturbance.*”

Summary

The NPS FEIS finding that two harbor seal flushing disturbances were “*attributed*” to DBOC oyster boats by the USGS Report is a misrepresentation of the findings in that report because the USGS Report only noted an “*association*” — a weak correlation — not “*attribution,*” or a cause-and-effect relationship.

Further, the USGS Report’s finding that two harbor seal flushing disturbances were “*associated*” with DBOC oyster boats is a misrepresentation of the findings reached by the team’s harbor seal behavior expert, Dr. Stewart. This is so because Dr. Stewart concluded that there was no evidence of disturbance by DBOC’s oyster boats on the two days — May 15, 2008, and June 11, 2008 — identified in the USGS Report.

In fact, there does not appear to be evidence to support the NPS’s assertion in the FEIS that DBOC oyster boats have caused disturbances to harbor seals and, therefore, evidence to conclude that future disturbances will occur.

The NPS conclusion in the FEIS was based upon two sequential misrepresentations — a FEIS misrepresentation of the USGS Report, and a USGS Report misrepresentation of its primary source, Dr. Stewart’s analysis.

Furthermore, Dr. Stewart’s finding that there was no evidence of seal disturbance on May 15, 2008 provides the further expert analysis called for in the 2011 MMC Report to eliminate the episode from consideration.

Accordingly, the NPS FEIS’s conclusion of a “*moderate adverse impact*” to harbor seals by DBOC is a misrepresentation because the two disturbance events it relied upon do not appear to have been related to DBOC’s oyster boats.

In summary, based on the analysis performed by Dr. Stewart, there is no evidence that DBOC oyster boats caused a flushing disturbance of harbor seals in Drakes Estero in the NPS photographs analyzed by the USGS and Dr. Stewart.

Were the two misrepresentations committed “*intentionally, knowingly, or recklessly*”?

The USGS Report misrepresented the Stewart Report, and the NPS FEIS misrepresented the USGS Report. The Stewart Report was contracted by NPS, and Dr. Stewart submitted his report simultaneously to both NPS and USGS on May 12, 2012. The NPS EIS team had access to the Stewart Report. From Dr. Stewart’s finding of “*no evidence of disturbance,*” two serial misrepresentations transformed that finding into one of attribution of two disturbances caused by DBOC oyster boats, which led to a finding of “*moderate adverse impact.*”

NPS scientific misconduct. Were these two serial misrepresentations committed “*intentionally, knowingly, or recklessly*”? The misrepresentations were reckless on behalf of NPS, and apparently knowingly and intentionally as well. For six years, NPS has claimed – at every opportunity and in multiple forums, testimony, and reports – that oyster boats disturb harbor seals. All of the previous NPS claims of evidence have fallen by the wayside. The MMC Report suggested one potential DBOC disturbance on May

15, 2008, based upon analysis of the NPS photographs, and advised that “[a] fuller examination of the photographs is necessary to form a conclusion with a reasonable level of confidence.” (*Id.*, pgs. 26-27).

Thus, according to NPS, the USGS Report validated the MMC finding of a DBOC disturbance on May 15, 2008. According to the NPS FEIS, there were now two independent verifications – one by MMC and the other by USGS – of a DBOC oyster boat disturbance to harbor seals on May 15, 2008.

Based upon the combined assessments of the MMC and the USGS reports, the NPS concluded that continuation of the oyster farm would result in a long-term “*moderate adverse impact*” on harbor seals due to the “*potential for disturbances*” and “*continued disturbances.*” (FEIS, pg 377).

Thus, Dr. Stewart’s finding – as reflected in the USGS Report and as submitted directly to NPS – was critical to permit NPS to make this finding in the FEIS. Given the six-year controversy concerning this exact topic, it would have been crucial for those preparing the EIS to examine the Stewart Report to see if Dr. Stewart actually reported a finding of a DBOC disturbance on May 15, 2008 (he did not). Moreover, even if the authors of the FEIS only examined the USGS Report (which would be negligent, given the submission of the Stewart Report to NPS), then nevertheless, they misrepresented the (incorrect) finding of “*association*” (a weak correlation) in the USGS Report, and called it “*attribution*” (causation) in the FEIS.

When considered within the six-year history of false claims by NPS of DBOC disturbances of harbor seals, and the use of the USGS Report and Stewart Report to drive the FEIS finding of a “*moderate adverse impact,*” the preponderance of evidence leads to the conclusion that this represents scientific misconduct by unknown NPS employees (allegation #6 here).

USGS scientific misconduct. USGS does not have a six-year history with this issue. Why did USGS Dr. Lellis, senior author of the USGS Report, and Dr. Carrie Blakeslee, the person who evidently did most of the writing of the USGS Report (see USGS emails), change this entry (May 15, 2008) in the appendix of the USGS Report to not accurately represent the Stewart Report? What happened between May 3, 2012, when the Stewart Report was submitted to USGS, and November 2012, when both the NPS FEIS and USGS Report were publicly released?

How did Dr. Lellis make these two mistakes to misrepresent the Stewart Report, thereby providing NPS with the finding of disturbances they were seeking? Dr. Lellis provided NPS with their so-called independent verification of DBOC disturbances, in the form of two “*associations,*” evidence that Dr. Stewart did not find.

Was this an innocent clerical mistake? Much time was spent on the part of USGS scientists generating the videos, analyzing the videos, identifying all of the potential flushing events, sending them to Dr. Stewart, reviewing Dr. Stewart’s findings, and ultimately writing the USGS Report. Given that this was a *major finding* of the report, did anyone double-checked the Stewart Report for accuracy? The USGS Report had high-level visibility; USGS Director Dr. Marcia McNutt reviewed the report.

This misrepresentation by USGS appears to have been committed “*intentionally, knowingly, or recklessly.*” OSTP needs to investigate who in NPS discussed the Stewart Report and USGS Report with Dr. Lellis. Was Dr. Lellis pressured in any way to misrepresent the Stewart Report? Were changes made during the review of the draft

USGS Report? Were NPS or DOI employees involved in that review process? Why did Dr. Lellis make these misrepresentations?

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 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. I offer those same emails and notes to the OSTP panel that investigates this matter.

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. 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 in touch with me to schedule an interview. I look forward to talking with you."

Dr. Gundersen did not reply. I wrote back to her 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.

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. Based on the available information, such behavior is not consistent with what OSTP intended for the White House Scientific Integrity Policy.

Towards the end of March 2013, I became aware that Interior had appointed Dr. Suzette Kimball as Acting Director, USGS (and DOI Scientific Integrity Officer), and that she had appointed Dr. Alan D. Thornhill as USGS Scientific Integrity Officer. On March 31, 2013, I wrote to Dr. Thornhill, copied Dr. Kimball, and included the string of emails to previous USGS Director Dr. McNutt and USGS SIO Dr. Gundersen:

Dear Dr. Alan D. Thornhill,

I write to you as USGS Scientific Integrity Officer. As you will see by the string of emails, correspondence, and documents below, on Sunday December 16, 2012, I alerted then-USGS Director Dr. Marcia McNutt in a phone conversation to a possible case of scientific misconduct at USGS. She told me she would notify her Scientific Integrity Officer at the time, Dr. Linda Gundersen, on Monday December 17. Dr. McNutt found the allegations very troubling. Since that time, I wrote to Dr. McNutt on December 17 and December 23, and heard no reply. I subsequently wrote to Dr. Gundersen on January 17 and January 23, and heard no reply.

I do not know when the SIO position changed from Dr. Gundersen to you, and if

you are aware of the allegations. Would you please respond to me and let me whether USGS has or has not conducted an investigation (and if so, its outcome), or whether USGS is or is not currently conducting an investigation (and if so, when you are planning on interviewing me). The complete silence from USGS when confronted with serious allegations of misconduct is troubling, and appears inconsistent with the President's Scientific Integrity Policy.

I request a phone call with you this next week to bring you up-to-speed on this issue, and to discuss whatever action USGS is taking. I look forward to talking with you.

Sincerely,

Corey S. Goodman, Ph.D.

As of the submission of this complaint on May 13, 2013, Dr. Thornhill never responded to my email.

In summary, the Stewart Report was submitted to NPS and USGS. Stewart found no evidence of disturbance of harbor seals by DBOC boats. The USGS Report incorrectly quoted the Stewart Report as finding a correlation. The NPS FEIS incorrectly quoted the USGS Report and Stewart Report as finding causation. Both agencies had the Stewart Report as of May 12, 2012. These serial misrepresentations meet the “*knowingly*” test. Given the six-year history of false NPS claims concerning DBOC disturbances of harbor seals, making these claims without double-checking the Stewart Report meets the “*recklessly*” test. The Stewart Report was in their hands for six months prior to the release of both the FEIS and the USGS Report. Was it intentional? OSTP needs to investigate. The record is replete with NPS preoccupation with false claims of DBOC disturbances of harbor seals. These misrepresentations need to be viewed in the context of the six-year history of NPS false claims concerning so-called oyster farm disturbances of harbor seals.

4. Allegation # 3: USGS & NPS Used False Science to Brief the Secretary

3. **USGS and NPS**, in their claims that the USGS analysis of the NPS photographs was *very high profile* and *very high priority*, and *needed to inform Secretary Salazar* for his decision on the oyster farm permit, apparently *briefed Assistant Secretaries Castle and Jacobson* with false claims of evidence of oyster farm disturbances of seals in Drakes Estero, and in so doing violated the DOI Scientific Integrity Policy.

When NPS released the Draft EIS in September 2011, they dismissed the 300,000 NPS photographs from the secret cameras, and detailed NPS logs, in a single sentence:

“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.”

The DEIS did include, however, other data without documented protocols, such as aerial photos, maps, and other data, not to mention use of data in a paper (Becker et al 2011) from 1982 and 1983 notebooks from Dr. Sarah Allen prior to when she worked for NPS and prior to current protocols for data collection. Nevertheless, the NPS dismissed the 300,000 photos and the detailed NPS logs that showed no DBOC disturbances of harbor

seals over a three and one half year period.

The NPS received complaints that they failed to include the analysis of the photographs in the DEIS. As a result, instead of relying on the detailed NPS logs, NPS asked USGS to analyze the photos for seal disturbances. We don't know when they asked. The first record (see emails below) is February 7, 2012.

The NPS FEIS (released November 20, 2012) found that the oyster farm had a "*moderate adverse impact*" on the harbor seals at Drakes Estero. This single determination had a significant impact on other findings in the FEIS, and on elected officials, the public, and media. After six years of false public claims, manipulated reports, and secret cameras – and millions of taxpayer dollars – NPS used the USGS Report to claim a moderate impact.

The NPS cited a 2012 USGS Report that analyzed, at NPS request, over half of the 300,000 time- and date-stamped NPS photographs of the oyster boats and harbor seals (from secret cameras operational for three and one-half years from 2007 to 2010). The USGS Report analyzed around 165,000 photos from the 2008 harbor seal pupping season. The FEIS quoted the USGS Report as concluding that on two occasions in 2008, oyster boats caused seals to flush into the water. This was a key finding for the FEIS.

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

The USGS Report was authored by William Lellis, Carrie Blakeslee, Laurie Allen, Bruce Molnia, Susan Price, Sky Bristol, and Brent Stewart (all from USGS except Dr. Stewart who is from Hubbs-SeaWorld Research Institute). Dr. Lellis was the senior author.

On December 14, 2012, Cause of Action, a Washington D.C. non-profit focused on government accountability, submitted a FOIA request to USGS. USGS provided a 91-page response on May 8, 2013. Below is a timeline of quotations from emails produced by USGS in response to FOIA.

What this timeline shows is that the USGS analysis of the NPS photos 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.**"

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 30th.**" 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,**" "**breathing down my neck,**" and needed it done because "**they've got deadlines for deciding on the permit.**" NPS was constantly in the loop as USGS staff wrote of "**keeping the department informed.**" The analysis of the photos was kept "**on the fast track**" 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).

The USGS analysis of the NPS photos, based upon Dr. Brent Stewart's analysis, was apparently presented to two Assistant Secretaries (Castle and Jacobson) in early July to help inform the Secretary's decision. These emails suggest that the Secretary's decision was indeed informed by the science. We imagine that the two Assistant Secretaries were presented the same misrepresentations found in the USGS Report.

We know that when Dr. Brent Stewart filed his report on May 3, 2012 with USGS, he found "*no evidence of disturbance*" of harbor seals by DBOC. We also know that 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.

What was presented to Director McNutt, Assistant Secretary Castle, and Assistant Secretary Jacobson in late June and early July? If they were presented with a finding that included anything other than "*no evidence of disturbance*," then they were presented with false science to help the Secretary make his decision concerning the DBOC permit.

Brief timeline of key statements in USGS emails [bold emphasis added]:

- (1) February 7, 2012: Dr. William (Bill) Lellis, Deputy Associate Director, Ecosystems, USGS, writes to Carrie Blakeslee (USGS):
 - a. "... **very high priority animal behavior project** starting immediately?"
 - b. "The NPS needs an evaluation of whether or not the photos can be used to determine disturbance events of seals."
 - c. "**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.**"
 - d. "**This is a high profile project. Very high profile ...**"
- (2) March 5, 2012: Carrie Blakeslee to Sally Holl (USGS): "**The analysis must be done quickly because NPS needs to give their final report to Ken Salazar by March 30th.**"
- (3) April 20, 2012: Laurie Allen to Brent Stewart (Hubbs-SeaWorld Research Inst.): "**NPS is chomping at the bit (They've got deadlines for deciding on the permit,) ...**"
- (4) May 1, 2012: Laurie Allen to Brent Stewart: "**NPS will be breathing down my neck this week, when do you think you'll be able to transmit something?**"
- (5) May 15, 2012: Laurie Allen to Carrie Blakeslee: "**We need to keep this on the fast track, ...**"
- (6) June 18, 2012: Laurie Allen to Carrie Blakeslee: "**NPS knows about these developments and we are keeping the department informed.**"
- (7) June 25, 2012: Bill Lellis to Carrie Blakeslee: "We have two briefings on Points Reyes: Tuesday, June 26, 3:00-4:00 pm. **USGS Director, Marcia McNutt.** Monday, July 2, 11:00-12:00 am. **Assistant Secretary of Interior for Water & Science, Anne Castle.**"
- (8) June 26, 2012: Hannah Hamilton (USGS Liaison to Water and Science) to Bill Lellis and Anne Kinsinger: "The briefing date and time needed to be changed to: Tuesday July 3rd from 12noon – 1PM, same location, room 6641. We needed to accommodate **Rachel Jacobson's** schedule." [Jacobson was Acting Assistant Secretary of Interior for

Fish and Wildlife and Parks]

- (9) December 3, 2012: Bill Lellis to Carrie Blakeslee: **“With Salazar’s decision to not extend the lease, I wonder if they are closing the books on this”**

For a detailed timeline of quotations from the USGS emails, see enclose “timeline and quotations from USGS FOIA response.05_13_13.pdf”

Summary

The USGS and NPS, in their claims that the USGS analysis of the NPS photographs was *very high profile* and *very high priority*, and *needed to inform Secretary Salazar* for his decision on the oyster farm permit, apparently *briefed Assistant Secretaries Castle and Jacobson* with false claims of evidence of oyster farm disturbances of seals in Drakes Estero. I conclude the following:

- (i) The USGS analysis of the NPS photographs was a very high priority project,
- (ii) Dr. Brent Stewart played the key role in determining whether disturbances took place and found “*no evidence for disturbance*” by the oyster farm,
- (iii) The USGS misrepresented Dr. Stewart’s findings concerning May 15 and June 11, 2008,
- (iv) This false science was apparently presented to two Assistant Secretaries (Castle and Jacobson) to inform the Secretary’s decision concerning the oyster farm permit,
- (v) If they presented what is in the USGS Report, then Interior employees committed scientific misconduct,
- (vi) If they presented what is in the USGS Report, then the Secretary’s decision was informed by false science, and
- (vii) The Department of Justice lawyers have misinformed the Federal Court with incorrect claims of adverse impacts in the NPS FEIS based upon false science.

5. Allegation # 4: Dr. Stewart Re-Reviewed Key Data, Confirmed Initial Findings of No Evidence of Disturbance, & USGS Covered Up His Report

4. USGS, after their Report was released, requested a subsequent re-review of key data by Dr. Stewart in his *Supplemental Report* that confirmed his earlier finding of *no evidence of disturbance*, a 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 high profile decision, but instead was covered up, and in so doing violated the DOI Scientific Integrity Policy.

Dr. Lellis and I exchanged emails from December 3 to 13, 2012, and talked by telephone for 90 minutes on December 7. Although I repeatedly asked him about Dr. Stewart’s Report, and asked him for a copy of Dr. Stewart’s Report (which he never provided to me), Dr. Lellis never mentioned during that extended email and telephone exchange that on December 5, either he or his colleague Dr. Blakeslee went back to Dr. Stewart and asked him to re-review the May 15 and June 11, 2008 NPS photographs, and that Dr.

Stewart provided a new Supplemental Report ("BSS Suppl review.pdf") to either Dr. Lellis or Dr. Blakeslee on December 10, a report that confirmed (in greater detail) what he had filed in his original report in May 2012, namely that there was no evidence for disturbance of the harbor seals by the oyster farm in the NPS photographs.

On December 3, 2012, I emailed USGS Dr. William Lellis (senior author of the USGS Report), and asked him some questions about methodology, and specifically about the so-called May 15, 2008 disturbance event (see enclosure "USGS Dr. Lellis & Dr. Goodman conversation and emails.pdf"). I also asked in Dr. Brent Stewart was the harbor seal behavior expert on the project.

On December 4, Dr. Lellis responded that "*Brent [Dr. Brent Stewart] was the harbor seal behaviorist on this project.*"

On December 5, I responded to Dr. Lellis and asked him for a copy of Dr. Stewart's report. Later that same day, Dr. Lellis responded, failed to provide Dr. Stewart's report, and instead wrote: "Yes, essentially that is Appendix 1 of the report" (i.e., Dr. Stewart's Report is Appendix 1 of the USGS Report). Over the next day, we arranged to speak by telephone on December 7, 2012, at noon PT (3 pm ET).

According to Dr. Stewart, on December 5, he was contacted by telephone and email by the USGS scientists, asking him to re-review the videos of the photographs from May 15 and June 11, 2008. He submitted his report ("BSS Suppl review.pdf") to Carrie Blakeslee on December 10. Neither his Supplemental Report, nor any of the request or submittal emails, were contained in the USGS response to the FOIA request provided in May 2013, suggesting that these exchanges may have taken place using private email addresses.

On December 7, 2012, Dr. Lellis and I spoke by telephone for over 90 minutes. My detailed notes of that conversation are provided as an enclosure ("USGS Dr. Lellis & Dr. Goodman conversation and emails.pdf"). Dr. Lellis described in detail the history and methodology for the USGS analysis. He never mentioned just how high profile was his project, and how he briefed two Assistant Secretaries of their findings. He claimed that he was glad that he had no familiarity with the Drakes Estero controversy and the previous reports. Whether this is correct or not for Dr. Lellis, we certainly know from the USGS emails provided in response to FOIA that Dr. Blakeslee read the previous reports and was very familiar with the issues.

I pointed out to Dr. Lellis the following contradiction. In the text of the USGS Report, he concluded a harbor seal disturbance took place on June 11, 2008 and that the presence of the oyster boat correlated with this disturbance. Yet in Appendix 1, which he told me represented Dr. Stewart's report, it said "no obvious disturbance" took place. After a period of silence, Dr. Lellis answered:

"There is a contradiction right there."

"That would be a contradiction."

"That is an obvious contradiction."

"That didn't get caught in the review."

"Only incident of seals flushing towards the water" 3 minutes prior to the boat arriving. "No cause and effect."

I next asked him about the May 15, 2008 photographs. I asked him whether Dr. Stewart did or did not find any evidence for an oyster farm disturbance in those photos. Dr. Lellis interrupted me, and said something that contradicted what he had said for the previous hour. He said Dr. Stewart's report was not the final word, that there was some

back and forth. This was quite different from what he told me at the beginning of the conversation. This change in his answer was triggered by my asking him about May 15, 2008. I asked him for a copy of Brent's spreadsheet. He told me it was nearly identical to Appendix 1 in the USGS Report. I asked again. He did not offer to send it to me.

Unbeknown to me, Dr. Stewart sent his Supplemental Report to Dr. Blakeslee and possibly Dr. Lellis on December 10. In it, he once again confirmed (in great detail) his finding of no evidence of disturbance on May 15 and June 11, 2008.

Concerning the May 15, 2008 NPS photographs, 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."

Concerning the June 11, 2008 NPS photographs, Dr. Stewart wrote:

"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."

Dr. Stewart presented a minute-by-minute analysis of each sequence of photographs. Both both he concluded that *"I did not consider this to be a flush"* and *"I don't consider this to be a flush."* In other words, no disturbance took place. Dr. Stewart's more detailed analysis in his Supplemental Report confirmed what he wrote in his original report in May 2012, namely, that the May 15 and June 11, 2008 photographs provided no evidence of harbor seal disturbances by the oyster boats.

On December 11, 2012, I emailed Dr. Lellis and once again requested a copy of Dr. Stewart's Report, and I also asked him what he was going to do about the contradiction between the way in which his USGS Report calls June 11, 2008 a correlated disturbance and the description in Appendix 1 of *"no obvious disturbance."*

Dr. Lellis did not answer. On December 13, I emailed him again and asked him again for a copy of Dr. Stewart's Report, and his thoughts about the analysis of the June 11, 2008 photographs.

Dr. Lellis responded on December 13. He did not send me a copy of Dr. Stewart's Report. He also did not disclose Dr. Stewart's new Supplemental Report on the May 15 and June 11, 2008 photographs. Rather, Dr. Lellis wrote:

I'm really locked down right now between a Research Grade Evaluation Panel and budgetary preparations and contingency planning for multiple federal appropriations scenarios. I'll try to get back to you when I have a little time to focus. I need to put some thoughts down on paper about our conversation last week which really caught me off guard. We have come at this question from a very different angle than the one you were asking me about and it took me some time to understand that. In fact, I'm still not sure I understand it. We were looking at the forest. The approach you were discussing was looking at the trees. In fact, not just the trees, but a specific tree and perhaps even just the bark of that tree. I'm not sure if we completely missed the question we were being asked to address, or if somehow the conversation took a completely different direction after we became involved, but there really is a big disconnect in what we attempted to address in the report and what you were attempting to extract.

Let's talk after I've had time to gather my thoughts and revisit the report.

Dr. Lellis never responded again. He never sent me Dr. Stewart's report or spreadsheet. He never commented on June 11, 2008. He never commented on May 15, 2008. He never told me about Dr. Stewart's Supplemental Report on December 10, 2012. Three days later, on Sunday December 16, I spoke at length with then-USGS Director Dr. Marcia McNutt about this issue.

Summary

The USGS scientists (either Dr. Lellis, Dr. Blakeslee, or both), after their Report was released, requested a subsequent re-review of key data by Dr. Stewart in his *Supplemental Report* that confirmed his earlier finding of *no evidence of disturbance*, a report that should have led USGS to retract its USGS Report, inform NPS of the major mistake in their FEIS, and inform the Secretary of mistakes in what was presented to inform his high profile decision. It appears as if none of this occurred. The USGS covered-up Dr. Stewart's Supplemental Report. This was scientific misconduct.

I conclude the following:

- (i) Beginning on December 3, 2012, I contacted Dr. Lellis and asked questions about the USGS Report finding of disturbances on May 15 and June 11, 2008, noted the contradiction between the text of the USGS Report and Appendix 1 concerning the June 11 analysis, asked what Dr. Stewart found, and asked for a copy of Dr. Stewart's Report.
- (ii) Even though I asked for a copy repeatedly, Dr. Lellis never provided me with a copy of Dr. Stewart's Report.
- (iii) In our telephone conversation of December 7, Dr. Lellis agreed that there was a contradiction in the June 11 finding in the text of his USGS Report and the finding of "*no obvious disturbance*" in Appendix 1.
- (iv) On December 5, 2012, either Dr. Lellis or Dr. Blakeslee requested that Dr. Stewart re-review the May 15 and June 11 data. Dr. Stewart submitted his Supplemental Report on December 10, 2012. Neither those emails nor the report were provided in the USGS response to a FOIA request, suggesting the possibility that this communication might have taken place by private email addresses.
- (v) I only obtained a copy of Dr. Stewart's Supplemental Report because a staffer for Congressman Jared Huffman, Dr. Owens, requested all of Dr. Stewart's documents and he provided the Supplemental Report to the Congressman.
- (vi) Dr. Stewart re-reviewed the May 15 and June 11 data at the request of USGS. His Supplemental confirmed his earlier finding of no evidence of disturbance.
- (vii) USGS suppressed Dr. Stewart's Supplemental Report and finding of no disturbances, thus covering up their earlier misrepresentation of Dr. Stewart's initial analysis. This is further confirmation of serial scientific misconduct involving the USGS misrepresentation of Dr. Stewart's analysis, and the NPS FEIS misrepresentation of the USGS Report.