

No. 13-15227

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DRAKES BAY OYSTER COMPANY and KEVIN LUNNY,
Plaintiff-Appellants,

v.

SALLY JEWELL, in her official capacity as Secretary,
U.S. Department of the Interior; U.S. DEPARTMENT OF THE INTERIOR;
U.S. NATIONAL PARK SERVICE; and JONATHAN JARVIS, in his official
capacity as Director, U.S. National Park Service,

Defendant-Appellees.

On Appeal from the United States District Court
for the Northern District of California
(Hon. Yvonne Gonzales Rogers, Presiding)
District Court Case No. 12-cv-06134-YGR

**AMICUS CURIAE BRIEF OF SARAH ROLPH
IN SUPPORT OF DRAKES BAY OYSTER COMPANY'S
PETITION FOR REHEARING EN BANC**

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**STATEMENT OF AMICUS CURIAE'S IDENTITY, INTEREST, AND
SOURCE OF AUTHORITY TO FILE**

This brief is filed pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure. All parties have consented to its filing. Amicus curiae Sarah Rolph is a freelance writer based in Carlisle, Massachusetts with strong ties to California. She has been working on a book about the Lunny family and its fight to save Drakes Bay oyster farm since 2006. In the course of researching the book, she has become intimately familiar with many details of the situation, and has published several articles about specific aspects of the ongoing controversy.

Amicus curiae's counsel did not author the brief, however, Mr. Idell is counsel for Drakes Bay Oyster Company on a matter in state court.

I. INTRODUCTION

The National Environmental Policy Act (“NEPA”) process requires that agencies “make efforts to provide meaningful public involvement in their NEPA processes.”¹ When the Park Service at Point Reyes took public comments on its Draft Environmental Impact Statement (“Draft EIS”) about Drakes Bay Oyster Company (“DBOC”), the voice of meaningful public involvement—in the form of thoughtful, considered responses—was drowned out by a huge number of form letters driven by four activist organizations using an automated direct-mail process. These form letters constituted the vast majority of public comments—roughly 90%. In the final analysis, these form letters were deemed “non-substantive,” as the NEPA rules require for exact-match form letters. Yet that analysis was not made public until the very end of the process, in November 2012. At the height of public awareness, in March 2012, these non-substantive comments were released to the public, publicized, and included in an official-looking Park Service tally. These actions created a false impression, for months, that public opinion was substantially in favor of not renewing DBOC’s lease, deceiving the public and deceiving decision-makers. And counsel for the government repeated that same misleading 90% claim at oral argument to the Ninth Circuit. This is an abuse of the NEPA process. En banc rehearing should be granted.

¹ A Citizen’s Guide to the NEPA: Having Your Voice Heard, at 26, *available at* <http://parkplanning.nps.gov/document.cfm?parkID=333&projectID=33043&documentID=36751>.

II. SECRETARY SALAZAR'S DECISION TO NOT RENEW DRAKES BAY OYSTER COMPANY'S PERMIT RELIED ON THE NATIONAL PARK SERVICE'S DECEPTIVE TABULATION OF PUBLIC COMMENTS

At oral argument, counsel for the Department of the Interior (“Interior”) argued that “90%” of the public comments “favored wilderness” for Drakes Estero:

“What’s the best use? And he [Salazar] went in and he listened to the owners of DBOC and the employees and the members of the public. He visited the oyster farm. He took many many public comments – 90% of which favored wilderness in this area. And based on all of that he said – my decision is that the public is better served by wilderness uses in Drakes Estero than by oyster farming.”²

Interior appears to be suggesting that the NEPA public comment process is a popularity contest. It is not.³ If it were, Interior should have mentioned a poll by the local newspaper that serves the Marin community where Drakes Bay is located, the *Marin Independent Journal*, which showed support of Drakes Bay’s continued

² http://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000006211 (at 24:15-26:04).

³ A Citizen’s Guide to the NEPA: Having Your Voice Heard, at 23, 26, and, 27, available at <http://parkplanning.nps.gov/document.cfm?parkID=333&projectID=33043&documentID=36751>.

oyster farming by an overwhelming margin of 84%.⁴ But even if we were to evaluate Interior's claim on its own terms, Interior is being misleading.

The National Park Service did indeed gather many public comments on the Draft EIS, but the process by which they were gathered, assembled, and publicized was highly deceptive.

**A. Negative Public Comments Against Drakes Bay on the Draft EIS
Were Solicited By Sophisticated, Electronic Direct Mail Systems**

The vast majority of the 52,473 public comments received on the Draft EIS were exact-match form letters. Form letters are considered “non-substantive,” and thus do not require a response.⁵

Most of these form letters were the result of a coordinated campaign by four well-funded organizations – the Sierra Club, the Natural Resources Defense Council (“NRDC”), the National Wildlife Federation Action Fund (“NWF Action Fund”), and the National Parks Conservation Association (“NPCA”). These groups fed their huge mailing lists into sophisticated direct-mail engines from a firm called Convio, which supports mass-mailings for fundraising and advocacy. (We

⁴ http://www.marinij.com/westmarin/ci_22102215/no-word-legal-action-by-westmarin-oyster.

⁵ FEIS Appendix F, page 7, *available at* <http://parkplanning.nps.gov/document.cfm?parkID=333&projectID=33043&documentID=50651>.

know that the Convio system was used because test messages from Convio are included in the public comments; they were assigned correspondence numbers 92, 93, 96, 97, and 98. The Convio brand is also shown on some of the email solicitations used to create the comments.)⁶

Members of these groups received an email solicitation asking them to take action. None of these emails mentioned NEPA, nor did they suggest that the recipient read and consider the Drakes Bay Draft EIS, nor did they indicate where the recipient could do so. Instead, the emails used the sort of language standard to direct-mail efforts, emphasizing the request for action in simple, general terms.

In many cases the information provided was not accurate.

For example, the NPCA email began: “We need your help to protect the only marine wilderness on the West Coast. An amazing estuary is supposed to receive permanent protection next year when a commercial oyster company’s permit expires, but a new proposal before the National Park Service could roll-back these protections.”⁷

In fact, there is already a marine wilderness on the West Coast—Limantour Estero. It is not true that Drakes Estero was “supposed to receive permanent protection” when the permit expired—in fact, the Reservation of Use and

⁶ See Exhibit A for an example of a Convio test message, and Exhibit B for an example of the Convio logo on an email solicitation.

⁷ See Exhibit B for a screen-capture of this email solicitation.

Occupancy issued to the Johnson Oyster Company in 1972 includes a renewal clause. And there was no “new proposal” to “roll-back protections” in the Draft EIS. This language seems designed to create the impression of an imminent threat, rather than to solicit a considered opinion on the Draft EIS.

Each solicitation included a pre-written form letter, which was electronically submitted as a comment on the Draft EIS when the recipient hit the “send” button. Recipients had the option to personalize the letter if desired; most did not.

The Convio system sent these messages directly into the NPS webform system, as indicated by the Convio test message (“this is a test message to confirm that we are able to successfully communicate with your office via your webform”).⁸ Thus the opportunity for a recipient—now a commenter on the Draft EIS—to actually read the Draft EIS he or she was supposedly commenting on was intentionally eliminated from the process.

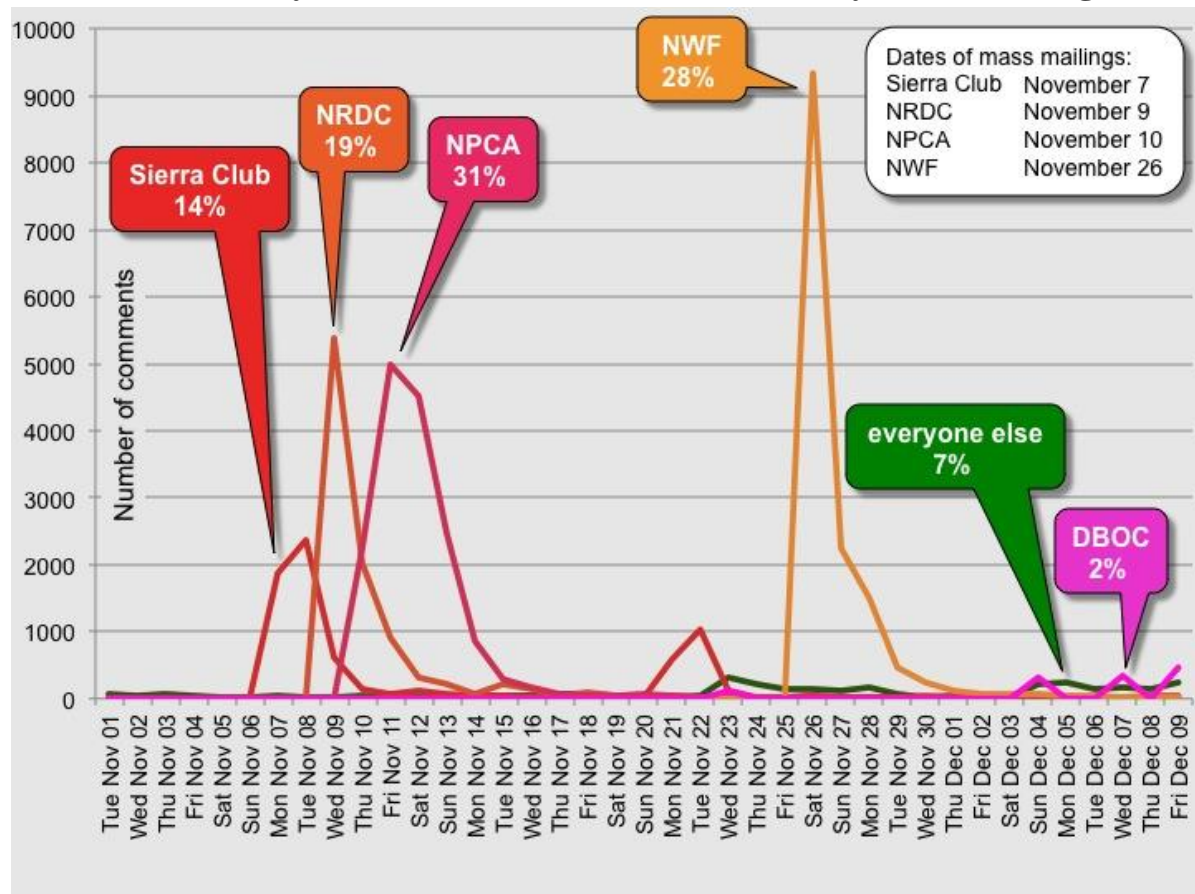
Sarah Rolph performed an analysis of the Sierra Club, NRDC, NWF Action Fund, and NPCA form-letter submittals using a program written for the purpose by her husband, P. Michael Hutchins. The use of a computer program was necessary because of the sheer volume of the messages and the way they were presented. The Park Service released all of the raw data in bundles of 1,000 comments each, in the form of .pdf documents. This made it essentially impossible for a reader to learn

⁸ See Exhibit A for the Convio test message.

what the public had said by simply browsing the comments—the 2,395 substantive comments were buried in the field of 52,473 total entries.

The results of our analysis were reported in the Point Reyes Light on March 8, 2012, and are graphically displayed in Figure 1, *Analysis of Public Comments Created by Mass Mailings* below.⁹ What Figure 1 shows is an abuse of the NEPA public comment process by a sophisticated, computerized direct mailing system, funded by four distinct parties.

FIGURE 1: Analysis of Public Comments Created by Mass Mailings



⁹ <http://www.ptreyeslight.com/article/ngos-gush-letters-seashore>.

B. The National Park Service Perpetuated An Impression of Overwhelming Public Support For Removing Drakes Bay

The National Park Service released the public comments on the Drakes Bay Draft EIS much earlier than is standard. In a March 1, 2012, press release, the National Park Service said: “In response to the high level of public interest, the NPS is posting the comments in advance of their publication in the Final Environmental Impact Statement.”¹⁰

Just minutes after this raw data was released, several of the activist groups responsible for the form letters sent out a press release claiming “92% of public comments ask Interior Secretary to honor government’s promise to protect wilderness.”¹¹ This figure of 92% was continually quoted in the press¹² and was apparently passed along to decision-makers, eventually finding its way into the oral argument of counsel for Interior.

In a highly unusual move, the National Park Service also released a *Preliminary Content Analysis Report* (“Preliminary Report”) based on the raw

¹⁰ National Park Service, (March 1, 2012), *available at* <http://www.savepointreyeswilderness.org/wp-content/uploads/2012/03/2012March1DEISCommentsPressRelease.pdf>.

¹¹ NPCA, Environmental Action Committee of West Marin, NWF, Press Release (March 1, 2012), *available at* <http://www.savepointreyeswilderness.org/wp-content/uploads/2012/03/PublicCommentRelease-3-1.pdf>.

¹² See, for example, http://www.huffingtonpost.com/sylvia-earle/point-reyes-wilderness_b_1343342.html.

comment data. Unlike the final Comment Analysis Report ordinarily issued, which presents the data in order of the most significant issues in the analysis, with non-substantive comments separated out, this Preliminary Report presented a simple tally. Data was presented in order of number of letters received, including the non-substantive form letters, with the top line showing that 48,396 letters were coded as “AL5900 Alternative A: Do Not Issue SUP (Support).”¹³ This top-line number matched the number of comments mentioned in the press release issued by the activists who drove the form-letter process, underlining the false impression that the majority of the letters received were valid comments in favor of wilderness.

In the Final EIS, which was not published until November, long after public attention to the NEPA process had waned, these non-substantive comments are presented properly, in Table F-5, “Correspondence Distribution by Non-Substantive Code (Does Not Require a Response)”¹⁴

The analysis presented in the Final EIS makes clear that the form letters were deemed non-substantive and set aside. Yet the public—which did indeed have a “high level” of interest—was given an entirely different impression.

¹³ See Exhibit C for a copy of this tally.

¹⁴ FEIS Appendix F, page 16, *available at* <http://parkplanning.nps.gov/document.cfm?parkID=333&projectID=33043&documentID=50651>.

Contrast this process with the descriptions in *A Citizen's Guide to the NEPA: Having Your Voice Heard*, which says that “[c]ommenting is not a form of ‘voting’ on an alternative,” and provides the following guidance on the public comment process:¹⁵

“Being active in the NEPA process requires you to dedicate your resources to the effort. Environmental impact analyses can be technical and lengthy. Active involvement in the NEPA process requires a commitment of time and a willingness to share information with the decisionmaking agency and other citizens.”

“Agencies are required to make efforts to provide meaningful public involvement in their NEPA processes.”

“Commenting is not a form of “voting” on an alternative. The number of negative comments an agency receives does not prevent an action from moving forward. Numerous comments that repeat the same basic message

¹⁵ *A Citizen's Guide to the NEPA: Having Your Voice Heard*, at 23, 26, and, 27, available at <http://parkplanning.nps.gov/document.cfm?parkID=333&projectID=33043&documentID=36751>.

of support or opposition will typically be responded to collectively.”

Given the emphasis on the need for substantive comments in the *Citizen’s Guide* (and the NEPA regulations it reflects), and its explicit mention that the process is not meant to be a vote, the steps taken by the National Park Service and by the anti-oyster-farm activists were highly inappropriate. When Interior’s counsel cited this data to the Court, it made matters worse.

The actions documented above are an abuse of the NEPA public comment process. The four organizations that used Convio to flood the public-comment database with form letters deceived the public with their mass mailings, creating a false campaign that masked the true nature of how the form letters would be used. This deception was perpetuated by the National Park Service’s decision to release those non-substantive comments and count them in a tally as comments against Drakes Bay, which was then relied upon erroneously by Secretary Salazar, and represented to this Court by counsel for Interior.

The goal of the NEPA public-comment process is clear: meaningful public involvement. Many concerned citizens took this process seriously, providing considered, informed opinions in the form of substantive comments. Yet the Park Service effectively withheld these substantive comments from the public by merging them with thousands and thousands of non-substantive comments.

The Park Service cooperated with the groups that created the flood of 92% non-substantive comments by releasing them early, announcing that release, and providing a tally that amounted to a false result (the Preliminary Content Analysis

report, with its “Correspondence Distribution by Code,” a table that bears no resemblance to the actual analysis). And the Park Service stood by without comment when the activist groups trumpeted their results as if they were valid. Only in the last few days of the process, when the Final EIS was quietly released without the required 30-day public-comment period (see 40 C.F.R. § 1506.9, requiring Final EIS to be filed with EPA, triggering a 30-day comment period on the Final EIS after publication of a Notice of Availability), did the Park Service make available the documentation that contains the truth about these comments.

Instead of fulfilling its responsibilities under NEPA, the Park Service used NEPA to deceive the public and to deceive decision-makers. En banc rehearing is necessary in this case.

III. CONCLUSION

Truth matters. When a government agency chooses not to tell the truth, it should be held accountable. The Drakes Bay Oyster Company’s petition for en banc review should be granted.

DATED: October 28, 2013

Respectfully submitted,

IDELL & SEITEL, LLP

By: /s/ Richard Idell
RICHARD IDELL
Attorneys for Amicus Curiae

By: /s/ Sarah Rolph
SARAH ROLPH

**RULE 32 CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS,
AND TYPE STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Circuit Rule 29-2(c)(2) because:

✓ this brief contains 2,291 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or

___ this brief uses a monospaced typeface and contains ____ lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

✓ this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010, Times New Roman 14 point, or

___ this brief has been prepared in a monospaced spaced typeface using _____ with _____.

DATED: October 28, 2013

/s/ Richard Idell
RICHARD IDELL
Attorneys for Amicus Curiae

EXHIBIT A

our way. As it came closer, and the volume increased, we saw that the skiff was loaded with full oyster bags.

We passed the skiff and paddled on; eventually the noise died away. We heard the soft splash of small waves upon our canoe, the calls of the birds; osprey, herons, egrets, cormorants, marbled godwits as well as curious seals also seemed to be enjoying this beautiful day. We were reminded of our honeymoon canoe trip, now nearly 50 years ago, through the wilderness Boundary Waters of Minnesota and Canada where for three days the only evidence we saw of fellow humans were two high-flying planes and a Native American family, also in a canoe.

Opportunities for such a wilderness experience are rarer now than they were 50 years ago, and still as valuable. We hope that Drake's Estero will soon offer that experience to residents and visitors who treasure the beauty and serenity and solitude of our few remaining wilderness places.

Katherine Mitchell Inverness

Correspondence ID: 96 **Project:** 33043 **Document:** 43390

Name: Test, Convio

Outside Organization: ORG_NAME Unaffiliated Individual

Received: Oct,17,2011 00:00:00

Correspondence Type: Web Form

Correspondence: Dear Staff: This is a test message to confirm that we are able to successfully communicate with your office via your webform, there is no need to log or respond to this message. You can disregard the remaining message, unless you want information about why such test messages are necessary. There is also no need to add the email address associated with this test (webformtest@convio.com) to your office's email lists. This message has been sent by Convio, one of the leading providers of online advocacy communication services to nonprofit organizations. Our clients include many of the country's largest public interest groups, trade and professional associations, labor unions, higher education institutions and corporations. These groups use our software to publish web pages that enable their supporters to send messages directly to their elected officials. Each message sent by our system has been initiated and authorized by a constituent, always contains the sender's name and home address, and has often been personally edited by the constituent. Regular testing of webforms is necessary because there are no standardized protocols governing communications with the offices of federal, state or local officials. In contrast with email and fax, webforms allow each office to require different information or steps to successfully transmit a constituent's message to their elected official. Moreover, webforms are often changed without notice, and these changes require us to modify the custom connectors we used to communicate with each office. If your elected official is a member of the US House of Representatives or Senate, we have begun working on a project under the auspices of the Congressional Management Foundation to develop best practices and promote a standard communications protocol that will help facilitate your management and processing of digital communications. We apologize if this test message has caused you any inconvenience. If you have any additional questions or concerns regarding these tests or online constituent communications generally, our Director of Engineering Services, Joseph Poirier, would be happy to speak with you. He can be reached at (512) 652-2665 or jpoirier@convio.com. Convio, Inc.

Correspondence ID: 97 **Project:** 33043 **Document:** 43390

Name: Test, Convio

Outside Organization: Convio, Inc. Unaffiliated Individual

Received: Oct,17,2011 00:00:00

Correspondence Type: Web Form

Correspondence: This is a test message to confirm that we are able to successfully communicate with your office via your webform. There is no need to log or respond to this message. You can disregard the remaining message, unless you want information about why such test messages are necessary. There is also no need to add the email address associated with this test (webformtest@convio.com) to your office's email lists.

This message has been sent by Convio, one of the leading providers of online advocacy communication services to nonprofit organizations. Our clients include many of the country's largest public interest groups, trade and professional associations, labor unions, higher education institutions and corporations. These groups use our software to publish web pages that enable their supporters to send messages directly to their elected officials. Each message sent by our system has been initiated and authorized by a constituent, always contains the sender's name and home address, and has often been personally edited by the constituent.

Regular testing of webforms is necessary because there are no standardized protocols governing communications with the offices of federal, state or local officials. In contrast with email and fax, webforms allow each office to require different information or steps to successfully transmit a constituent's message to their elected official. Moreover, webforms are often changed without notice, and these changes require us to update the custom connectors we used to communicate with each office. If your elected official is a member of the U.S. House of Representatives or Senate, we have begun working on a project under the auspices of the Congressional Management Foundation to develop best practices and promote a standard communications protocol that will help facilitate your management and processing of digital communications.

We apologize if this test message has caused you any inconvenience. If you have any additional questions or concerns regarding these tests or online constituent communications generally, our Director of Engineering Services, Joseph Poirier, would be happy to speak with you. He can be reached at (512) 652-2665 or at joseph@convio.com.

Correspondence ID: 98 **Project:** 33043 **Document:** 43390

Name: Test, Convio

EXHIBIT B

----- Original Message -----
Subject: Be a Voice for Wilderness at Point Reyes
From: "Neal Desai, NPCA" <takeaction@npca.org>
Date: Thu, November 10, 2011 11:54 am
To:



National Parks Conservation Association®

Protecting Our National Parks for Future Generations®

Dear

We need your help to [protect the only marine wilderness on the West Coast](#). An amazing estuary is supposed to receive permanent protection next year when a commercial oyster company's permit expires, but a new proposal before the National Park Service could roll-back these protections.



Drakes Estero, Point Reyes National Seashore
© Robert Campbell

At stake is the future of Drakes Estero, an estuary within California's Point Reyes National Seashore that is considered the ecological heart of the park. The estuary is on track to receive full wilderness designation in 2012, but an oyster company would like to extend its operating permit, contrary to law passed to protect the area as wilderness.

[Click Here to Send Your Comments!](#)

Take Action

Drakes Estero is a refuge for wildlife, where harbor seals give birth and migratory birds rest and feed during long journeys. Visitors should be able to enjoy it in its full glory instead of continued commercial oyster operations that include thousands of motorized boat trips each year.

Now, the National Park Service has to decide whether to continue commercial oyster operations even though a deadline was set for next year. It is time to return the area for the public to enjoy this irreplaceable national treasure.

Take Action: Please tell the National Park Service that national park wilderness is for visitors and wildlife conservation, not private commercial use.

As always, we are grateful for your action in protecting America's national parks from misguided efforts and other threats. Thank you.

Sincerely,



Neal Desai
Assoc. Director, Pacific Region

[Share this on Facebook](#)

[Share this on Twitter](#)

This message was sent to pi@mindspring.com by the National Parks Conservation Association.

E-mail us at TakeAction@npca.org, write to us at 777 6th Street, NW, Suite 700, Washington, DC 20001, or call us at 800.NAT.PARK (800.628.7275).

Can't see this message? View it on the [NPCA Website](#).

NPCA | 777 6th Street, NW | Suite 700 | Washington, DC 20001 | 800.NAT.PARK | npca@npca.org



EXHIBIT C

Correspondence Distribution by Code

Code	Description	Correspondences
AL5900	Alternative A: Do Not Issue SUP (Support)	48,396
AL8190	New Alternative: Issue a Renewable SUP (Collaborative Management with multiple agencies)	1,750
AL7400	Alternatives: Dismissed - Issue a Renewable SUP	1,431
AL6090	Alternatives: Issue New SUP (Generic Support)	575
IA1000	Impact Analysis: General Comments	262
PN4100	Purpose and Need Issue: Precedence	242
SE2000	Socioeconomic Resources: Impact of Alternatives	189
IA3100	Impact Analysis: Sustainable Local Food	184
PN7200	Impact Topic Dismissed: Cultural Resources	133
HS2000	Wildlife and Wildlife Habitat - Harbor Seals: Impact of Alternatives	128
PN5610	Relationship to Other Plans: GMP	116
AL5000	Alternative A	108
GC1000	General Concerns	98
PN5630	Relationship to Other Policies: NOAA Aquaculture Policy	98
WQ2000	Water Quality: Impact of Alternatives	96
IA1090	Impact Analysis: General Comments	95
PN7100	Impact Topic Dismissed: Carbon Footprint	92
RF1000	Suggested References	92
SP1000	Special-Status Species: Affected Environment	86
SP2000	Special-Status Species: Impact of Alternatives	77
IA4100	Cumulative Impacts: Shell Donation	60
VE2000	Visitor Experience and Recreation: Impact of Alternatives	59
BE2000	Wildlife and Wildlife Habitat - Benthic Fauna: Impact of Alternatives	52
PN5800	Establishment of Wilderness at Point Reyes National Seashore	50
IA2500	Impact Analysis: References Used for Assessing Impacts	42
PN5500	Purpose of Point Reyes National Seashore	42
AL7300	Alternatives: Dismissed - Alter SUP Term	42
EE2000	Eelgrass: Impact of Alternatives	36
WI2000	Wilderness: Impact of Alternatives	35
OS1000	Outside Scope	32
AL12090	Alternatives: General Comments	29
AL8000	Alternatives: New Elements or Alternatives	28
AL6390	Alternatives: Issue New SUP (Support Alternative D)	27
AL11000	Alternatives: Environmentally Preferable Alternative	27
IA4300	Cumulative Impacts: Ranching	26
VE1000	Visitor Experience and Recreation: Affected Environment	26
PN5000	Authority Over Drakes Estero and Adjacent Lands	24
AL6000	Alternatives: Elements Common to All Action Alternatives	21

EXHIBIT D

APPENDIX F: COMMENTS AND RESPONSES ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

Table F-5. Correspondence Distribution by Non-Substantive Code
(Does Not Require a Response)

Code	Description	Correspondences
AL12090	Alternatives: General Comments	38
AL5900	Alternative A: Do Not Issue SUP (Support)	48485
AL6090	Alternatives: Issue New SUP (Generic Support)	587
AL6091	Alternatives: Issue New SUP (Support Alternatives B and D)	4
AL6190	Alternatives: Issue New SUP (Support Alternative B)	6
AL6290	Alternatives: Issue New SUP (Support Alternative C)	4
AL6390	Alternatives: Issue New SUP (Support Alternative D)	31
CC3100	Consultation and Coordination: Public Meetings	25
DU1000	Duplicate Correspondence/Duplicate Comment	300
GC1000	General Concerns	340
IA1090	Impact Analysis: General Comments	113
OS1000	Outside Scope	51
PN9000	Ch 1: Editorial Changes	4
DU	Duplicate Correspondence/Duplicate Comment	90

Note: Each correspondence may have multiple codes. As a result, the total number of correspondence may be different than the actual comment totals

Table F-6. Correspondence Distribution by Correspondence Type

Type	Correspondences
Web Form	51,526
Letter	879
Park Form	65
Other (Flip charts from public meetings)	3
Total	52,473

9th Circuit Case Number(s) 13-15227

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) October 28, 2013 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) /s/ Kelly Montgomery

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

[Empty box for listing non-CM/ECF participants]

Signature (use "s/" format)

[Empty box for signature]