

#07-01217

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August 23, 2007

NPS Washington Administrative Program Center
Stop 2605, attention: Correspondence Control Unit (CCU)
U.S. Department of Interior
1849 C Street N.W.
Washington, D.C. 20240

Re: Complaint about Information Quality

Dear NPS Correspondence Control Unit Officer:

We have prepared this request on behalf of Pacific Coast Shellfish Growers Association ("PCSGA"), Drakes Bay Oyster Company ("DBOC"), a California Corporation, Marin County Farm Bureau (hereinafter "Farm Bureau"), Marin Organic, and the Pacific Institute. These entities are collectively referred to hereinafter as "Complainants." This request is submitted to the National Park Service ("NPS") pursuant to the October 16, 2002 Director's Order #11B: Ensuring Quality of Information Disseminated by the National Park Service (hereinafter "NPS Guidelines").

I. Identification of Complainants.

This request is submitted on behalf of DBOC, PCSGA, Farm Bureau, Marin Organic and the Pacific Institute. Because Complainants are harmed by the disseminated information that is the subject of this request, Complainants are "affected persons" that may request formal information correction under the NPS Guidelines. *See infra* part IV.

DBOC's address is:

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Rec'd
8-28-07

PCSGA's address is:

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Farm Bureau's address is:

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Marin Organic's address is:

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Pacific Institute's address is:

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Complainants request that further correspondence in this matter be directed to their undersigned representative, as follows:

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II. Authority for Complaint Submittal

This complaint and request for correction of information is submitted under Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763A-153 to 2673A-154 (2000) (codified at note to 44 U.S.C. § 3516). That Act addresses requirements for the dissemination of information by federal agencies. The report that is the subject of this request is "information" because it is a communication of knowledge such as facts and data, disseminated by Point Reyes National Seashore ("PRNS") staff and available on the NPS website. See NPS Guidelines, Part VI.E. (defining "information"). Publication of the report on the NPS website and distribution by PRNS staff to the public meets the definition of "dissemination" because it is information that NPS has initiated and sponsored. See NPS Guidelines, Part VI.F. (defining "dissemination").

III. Description of Information that is the Subject of this Complaint

This complaint and request for correction is submitted with regard to multiple versions of a report entitled, *Drakes Estero: A Sheltered Wilderness Estuary*, (hereinafter "NPS Report"), as disseminated on the PRNS web page of the NPS website. See http://www.nps.gov/pore/parkmgmt/planning_drakesestero.htm.¹ The NPS Report does not include a publication number, does not include a date, and does not name an author. However, the NPS website, the cover page of the NPS Report, and concluding page of the NPS Report indicate that this is an NPS initiated or sponsored report concerning PRNS. At least three distinct versions of the NPS Report appeared on the above cited web page beginning in the fall of 2006, changing March or April 2007, and changing again on May 11, 2007. Each version of the NPS Report, in reverse chronological order, is attached hereto as Attachments 1 through 3. PRNS officials also provided a fourth version of the NPS Report to the Marin County Board of Supervisors and referenced analysis within the NPS Report before the Board of Supervisors on May 8, 2007.² This fourth version is attached hereto as Attachment 4.

¹ Complainants recognize the NPS Report was removed from the website around July 23, 2007 and the NPS/PRNS website now includes a limited acknowledgement of some errors. However, as explained in the following sections of this complaint, the corrections on the NPS/PRNS website are themselves incorrect and incomplete. Furthermore, removal from the web site has not reversed the impact of the NPS Report.

² Complainants assume that the fourth version of the NPS Report was also on the web, but cannot confirm that assumption.

The specific material to be corrected within the NPS Report includes statements identifying oyster farming as imposing four negative environmental impacts, and the underlying information used to develop those statements. Additional statements to be corrected concern NPS Management Policies as to the management of Drakes Estero as potential wilderness. The statements in the NPS Report that are the subject of this challenge include:

1. Statements in the NPS Report that a primary source of sediment fill in Drakes Estero comes from oyster feces, which damage the Estero's ecological functioning. *See Attachment 1 at 10, 17.*
2. Statements in the NPS Report concerning negative interactions between oyster racks and the estuary habitat, with emphasis on species diversity and eelgrass beds. *See Attachment 1 at 11-15, 17.*
3. Statements in the NPS Report that oyster racks attract an invasive species that could further alter the ecology of Drakes Estero. *See Attachment 1 at 13-14, 16-17.*
4. Statements in the NPS Report that the harbor seal population in Drakes Estero decreased directly due to DBOC operations. *See Attachment 1 at 15-17.*
5. The title of the NPS Report and statements in the NPS Report regarding Drakes Estero's status as potential wilderness. *See Attachment 1 at 2.*
6. Statements in the NPS Report that NPS Management Policies direct staff to actively seek to remove conditions that preclude wilderness designation. *See Attachment 1 at 3.*
7. Statements in the recent acknowledgment of correction published on the NPS/PRNS website regarding the validity of the information in the NPS Report. *See Attachment 19.*

IV. Explanation of how Each Complainant is Affected

The NPS Report that is the subject of this correction request addresses the impacts of oyster farming on the ecological communities of Drakes Estero. The information contained within the NPS Report has unfairly damaged DBOC's reputation within the local community and tainted DBOC's ongoing compliance process with the California Coastal Commission as well as its NPS use permit process. The NPS Report identifies DBOC as the operator of an oyster farming and processing operation within the PRNS, *see Attachment 1 at 2*, and continues thereafter to accuse both oyster farming in general and DBOC specifically as negatively impacting the environment in Drakes Estero, *see Attachment 1 at 10-17.*

Commentaries published in local newspapers rely upon the NPS Report's analysis and accompanying data to attack oyster farming as incompatible with preserving the estuary and to

oppose DBOC's continued operations within Drakes Estero. Such press articles, published in the Point Reyes Light and the Coastal Post, are attached hereto as Attachments 5 and 6. In addition, the Sierra Club Yodeler, the newspaper of the Sierra Club San Francisco Bay Chapter, relied on the NPS Report (note link to NPS Report at end of article) in publishing an article criticizing the environmental impacts of DBOC's operations. See Attachment 7.

PRNS officials also used the information in the NPS Report to publicly accuse DBOC of causing harm to Drakes Esteros' harbor seal population and eelgrass beds at a May 8, 2007 Marin County Board of Commissioners meeting. Public testimony at this meeting is available as a video link at <http://www.co.marin.ca.us/depts/BS/Archive/Meetings.cfm>; an unofficial transcript of PRNS staff testimony is attached hereto as Attachment 8.

Finally, the NPS Report influenced agency decision making directly related to DBOC's operations. For example, the California Coastal Commission issued a June 5, 2007, letter to DBOC raising concerns of "adverse impacts [DBOC] operations may be having on coastal resources," that appear to be based on information found in the NPS Report. The California Coastal Commission letter is attached hereto as Attachment 9.

In addition, because DBOC's operations are similar to other oyster mariculture operations undertaken nation-wide, the NPS Report essentially accuses all oyster operations of imposing negative impacts on the environment in the estuaries where oyster farming occurs. Currently the Army Corps of Engineers is undergoing a programmatic consultation under the Endangered Species Act for a new nationwide permit, Nationwide Permit 48, which authorizes existing shellfish culture operations on the Pacific Coast. As a part of the consultation, the Army Corps of Engineers is reviewing available scientific data related to existing shellfish activities and their impacts on threatened or endangered species and associated critical habitat. If relied upon in this programmatic consultation, the NPS Report and the analysis underlying the NPS Report will have a damaging effect on the entire West Coast shellfish farming community, and negative consequences for all of the nation's shellfish growers. PCSGA is an Association whose membership is comprised of shellfish growers in California, Oregon, Washington, Alaska and Hawaii, harmed by the NPS Report.

The NPS Report threatens the continued existence of sustainable agriculture in Marin County. The recent use of the NPS Report in the press and by PRNS officials greatly concerns the Farm Bureau and Marin Organic, two organizations that support DBOC and would be directly impacted by DBOC's discontinued operations. The Farm Bureau believes that the loss of DBOC in Drakes Estero could result in further loss of prime farmland and ranches surrounding the Estero. Both the individual loss of DBOC and greater loss of surrounding farmland directly affects the Farm Bureau's efforts to preserve agriculture in Marin County. Marin Organic aims to foster environmentally sound agriculture and has certified DBOC's neighboring ranch, also owned by Kevin Lunny, as Salmon Safe. Marin Organic regularly leads dialogue with community leaders with respect to sustainable agriculture in Marin County. Because of the misinformation published within the NPS report, utilized in local news articles, and disclosed by PRNS officials at public meetings, Marin Organic has devoted extra resources and time with the community in response to the NPS Report's claims. The NPS Report's

challenge to DBOC practices hampers Marin Organic's efforts to promote sustainable agriculture.

Finally, the NPS Report lacks scientific integrity with respect to the condition of Drakes Estero, an issue of direct concern to the Pacific Institute. The Pacific Institute is dedicated to protecting the natural world, encouraging sustainable development, and improving global security. The organization operates programs on Water Sustainability, Community Strategies for Sustainability and Justice, and the Integrity of Science, all of which have an interest in the falsifications and misrepresentations found in the NPS Report. Specifically, the Pacific Institute's Science Integrity Program exposes fraudulent use and abuse of scientific discovery. This complaint comprises the Pacific Institute's response to the NPS Report's misuse of science and lack of scientific integrity.

V. Summary of Failures to Comply with Applicable Guidelines

The NPS Report and associated public comments by PRNS officials regarding oyster farming in Drakes Estero fails to comply with the basic standards of quality required under NPS Guidelines, the U.S. Department of the Interior Information Quality Guidelines (hereinafter "Interior Guidelines"), and the Office of Management and Budget's Guidelines for Ensuring and Maximizing Quality, Objectivity, Utility and Integrity of Information, see 67 FR 8452.

First, the NPS Report does not maximize objectivity, a defined component of the basic standard of quality required by NPS Guidelines, either in presentation or substance. See NPS Guidelines, Part VI.C. (defining "objectivity"). The NPS Report mischaracterizes several ecological studies of Drakes Estero by incorrectly citing portions of those studies and ignoring the overall conclusion of those same studies. See Parts VI.1.a.-c. of this complaint. The NPS Report also fails to include data supporting assertions that DBOC operations are harming Drakes Estero and reveals bias by disregarding scientific studies that do not support the NPS Report's conclusions. See Parts VI.1.a.-e. of this complaint. Further, the NPS Report ignores an entire body of science supporting the opposite conclusion, that shellfish operations provide positive benefits to marine environments. See Part VI.1.c. of this complaint. The NPS Report consistently fails to present scientific information in the proper context, directly violating the definition of objectivity under NPS Guidelines that dictates information be "presented in an accurate, clear, complete, and unbiased manner" as well as "accurate, reliable, and unbiased." See NPS Guidelines, Part VI.C. (defining "objectivity").

Second, NPS officials have failed to utilize the required methods of transparency for producing quality information, as identified under the standards for reliable data set forth by the NPS and the Department of the Interior. See NPS Guidelines, Part III.A. ("The NPS's methods for producing information will be made transparent, to the maximum extent practicable ..."); Interior Guidelines, Part II. The NPS Report does not include accurate documentation for assertions that DBOC operations have harmed eelgrass conditions throughout the Estero, species diversity, and the harbor seal population in Drakes Estero. See Part VI.2.a. of this complaint. NPS officials did not verify the quality of information disseminated at each stage of information development, evidenced by multiple substantive revisions to the NPS Report after it was initially published, and reanalysis of several studies

cited in the NPS Report. See Part VI.2.b. of this complaint. Furthermore, NPS officials disregarded NPS Guidelines to keep users informed about these ongoing corrections and revisions to the NPS Report. See Part VI.2.c. of this complaint. The NPS Report and accompanying analysis utterly fails the Interior Guidelines' requirement of "sufficient transparency about data and methodology [such] that an independent reanalysis could be undertaken by a qualified member of the public resulting in substantially the same results." Interior Guidelines, Part II; see Part VI.2.d. of this complaint.

Third, the NPS Report fails to meet NPS Guidelines for accuracy and timeliness. See NPS Guidelines, Part III.B. The NPS Report repeatedly misrepresents the results of ecological studies conducted in Drakes Estero, utilizes general studies of oyster farming which identify only negative impacts on the environment, and fails to document assertions about specific harms attributed to DBOC operations. See Part VI.1.a.-c. of this complaint. Not only have NPS officials failed to provide references for many of the assertions in the NPS Report, officials have also denied public requests for the data supporting these assertions. See Part VI.3.c. of this complaint. With regards to timeliness, the NPS Report identifies 2001 NPS Management Policies as controlling staff action rather than the current 2006 NPS Management Policies. See Part VI.3.d. of this complaint.

VI. Specific Failures to Comply with Applicable Guidelines

1. The NPS Report does not "maximize objectivity" to comply with "basic standards of quality."

The NPS Report violates NPS Guidelines that information be objective in presentation and substance by misrepresenting four distinct claims and mischaracterizing studies to support accompanying statements. Furthermore, the NPS Report excludes an entire body of science discussing the positive influence of oysters on marine ecological functioning. See Attachment 12 (summarizing over 40 published studies). NPS Guidelines define objectivity as presenting information "in an accurate, clear, complete, and unbiased manner." See NPS Guidelines, Part VI.C. (defining "objectivity"). Information must also meet the substantive requirements of objectivity to ensure information is "accurate, reliable, and unbiased." See NPS Guidelines, Part VI.C. (defining "objectivity").

a. Statements concerning sediment and oyster feces lack "objectivity in presentation and substance."

The inaccuracies and bias in how these statements are presented, as well as the statements' substantive inaccuracies, are explained in detail in the report from Corey Goodman, Ph.D, to the Marin County Board of Supervisors, attached hereto as Attachment 10. The statements from the NPS Report culminate in a claim made on page 17 of the NPS Report, see Attachment 1, under the heading "Oyster farming impacts on the ecological communities of Drakes Estero:"

A USGS researcher stated that a source for sediment fill in the estero was from oyster feces and from structures trapping sediment.

Dr. Goodman identifies this overarching claim as blatantly inaccurate given that Dr. Roberto Anima, the cited USGS researcher, neither studied oyster feces in Drakes Estero nor referenced oyster feces in the cited report. See Attachment 10 at 4-9. The 1991 study by Dr. Anima entitled, *Pollution Studies of Drakes Estero, and Abbotts Lagoon, Point Reyes National Seashore*, examined the specific effects of inputs from local ranches on Drakes Estero, not the effects of oyster farms. (The study concluded the ranches imposed no negative pollutant effects.) See Attachment 10 at 5. Furthermore, Dr. Anima himself reported to both Dr. Goodman and to Thomas Yeatts of the Point Reyes Light that the NPS Report misquotes his study and that he has informed PRNS officials that the NPS Report's references to his study are wrong. See Attachment 10 at 4. Yeatt's June 15, 2007 article is attached hereto as Attachment 11. Complainants also understand that Dr. Anima expressly informed PRNS representatives that they were misquoting his study.

PRNS staff was informed prior to initial publication of the NPS Report that Dr. Anima did not study the effects of oyster sedimentation in Drakes Estero. Jill Baltan of the California Department of Public Health personally communicated to DBOC that in August 2006, just prior to initial dissemination of the NPS Report, she discussed Dr. Anima's USGS study with Dr. Sarah Allen of PRNS. In discussing the initial draft of a report Baltan drafted for the Department of Public Health, referencing the primary source of sedimentation in Drakes Estero, Baltan informed Dr. Allen that Dr. Anima did not study oyster feces. Dr. Allen nevertheless requested that Baltan remove reference in her report that named the primary source of sedimentation in Drakes Estero as "livestock, trails, and roads."

The NPS Report also exhibits bias by ignoring studies that show the neutral or positive effects of oyster sedimentation on ecological habitats. First, the NPS Report fails to reference positive conclusions following a 2005 NPS-funded study of Drakes Estero by D.L. Elliot-Fisk, et al, entitled, *Assessment of Oyster Farming in Drakes Estero, Point Reyes National Seashore, Final Completion Report*. See Attachment 10 at 9-11. The Elliot-Fisk, et. al study, conducted in Drakes Estero, concludes that pseudofeces are undetectable due to the amount of organic matter added to the sediment from eelgrass decomposition. *Id.* at 10. Instead, the NPS Report uses studies by Cranford et al. and Porter et al., not conducted in Drakes Estero, to imply that oyster feces negatively impacts Drakes Estero. See Attachment 1 at 11. The NPS Report disregards and excludes comparable studies in Florida and California, concluding that pseudofeces and feces produced by bivalves can actually enhance eelgrass productivity and blade growth rate. See Attachment 12 at 2. A full appended report of science revealing the general positive interactions between shellfish and estuaries is attached hereto as Attachment 12. The NPS Report's repeated failure to present an unbiased account of these studies is discussed in more detail in the following sections.

- b. Statements concerning the interactions between oyster racks and the surrounding ecosystem, particularly species diversity and eelgrass, lack objectivity in presentation.

The NPS Report presents information on the environmental interactions of DBOC's operations in an incomplete and biased manner, violating the NPS Guidelines for objectivity. First, the NPS Report makes a series of scattered statements regarding species composition within Drakes Estero, culminating in assertions that DBOC's "equipment and structures change the community composition and abundance of species." See Attachment 1 at 17. Second, the NPS Report takes aim at the condition of eelgrass in Drakes Estero, summarized on page 17 as follows:

Eelgrass beds are found in all suitable habitats within Drakes Estero, except between active oyster racks, where they do not exist due to shading and possibly other effects. In 2003, with 38 active oyster racks, this amounted to at least 1.5 acres of lost eelgrass cover.

These claims stem from Jesse Wechsler's 2004 master's thesis entitled, *Assessing the Relationship Between the Ichthyofauna and Oyster Mariculture in a Shallow Coastal Embayment, Drakes Estero, Point Reyes National Seashore*. NPS funded the study, conducted with the assistance of PRNS officials, which tested a hypothesis that the Drakes Estero oyster racks reduce species diversity and abundance. See Attachment 10 at 16-17. Instead, Wechsler concluded the very opposite; he found no statistically significant difference in species diversity due to the presence of oyster racks in Drakes Estero; indeed, species richness and diversity is greater near oyster racks. See Attachment 10 at 17-18.

Dr. Goodman discusses in detail how the NPS Report entirely disregards Wechsler's substantive conclusion that the oyster farm increases diversity in Drakes Estero while selectively citing Wechsler's species documentation. See Attachment 10 at 17-21. Ignoring Wechsler's positive findings regarding species diversity, the NPS Report instead discusses a reduction in clam abundance under oyster racks with no cited support. See Attachment 1 at 14. The NPS Report also relies on a USGS scientist's statement, which was not based on studies actually conducted in Drakes Estero, that only hypothesizes that oyster operations may decrease species abundance. *Id.* That hypothesis was actually tested in Drakes Bay by Wechsler, and he concluded the opposite, a fact that the NPS Report completely fails to acknowledge.

The NPS Report similarly does not reveal Wechsler's complete assessment of the relationship between the eelgrass and the oyster racks. Wechsler's NPS-funded thesis determines:

A major concern in coastal environments is the loss of eelgrass beds that results from encroaching development. ... Eelgrass beds are prevalent throughout the Drakes Estero ecosystem. A qualitative look at the distribution of eelgrass beds in Schooner Bay indicated that its productivity

was not affected substantially by oyster mariculture; however eelgrass growth is restricted directly beneath the oyster racks due to light attenuation. Adjusting the spacing between oyster lines would likely restore productivity under the racks, and could allow oysters and eelgrass to be grown in concert. (Wechsler at 29-30)

The NPS Report disregards Wechsler's assertion that eelgrass beds are actually prevalent throughout Drakes Estero. Instead, the NPS Report isolates focus on eelgrass to the possible loss of 1.5 acres out of 2200 acres in Drakes Estero (statistically less than 0.001%), extrapolates in great detail on the current number of racks in operation, and alludes to a broad range of negative impacts on eelgrass beds. See Attachment 1 at 12.

The NPS Report also fails to reference positive conclusions within the Elliot-Fisk, et al study, characterizing the study as only identifying restricted eelgrass growth under oyster racks. See Attachment 1 at 12. However, the full Elliot-Fisk, et al. report concludes, "We found the oyster racks to have no pronounced impacts on the eelgrass beds, which existed both under and away from the racks as an incredibly rich habitat type." See Attachment 10 at 9-11. The Elliot-Fisk researchers go on to write of "prolific eelgrass beds in Drakes Estero." The NPS Report simply disregards this information establishing that eelgrass beds are healthy, expanding, and providing excellent habitats for many of Drakes Estero's fish and invertebrates.

By incomplete and selective use of studies, NPS presents information regarding species diversity and eelgrass beds in Drakes Estero out of context and fails to attain the NPS Guidelines' requirement of maximized objectivity in presentation. See NPS Guidelines, Part III.

c. Statements concerning the interactions between oyster racks and the surrounding ecosystem lack objectivity in substance.

Claims that oyster operations harm eelgrass are substantively inaccurate and biased as well. While evidence shows that the Drakes Estero eelgrass beds are healthy and that they have significantly expanded in coverage throughout the estero over the past 15 years, the NPS Report acknowledges nothing to this effect. On May 8, 2007, Dr. Goodman presented independent research as testimony before the Marin County Board of Supervisors, attached hereto as Attachment 13. The California Department of Fish and Game ("DFG"), in collaboration with the PRNS, used high-resolution aerial photographs of Drake's Estero at low tides from 1991 and 2007 to compare the extent of the eelgrass coverage. In 1991, there were 367.8 acres of eelgrass in Drake's Estero, whereas in 2007 there are 736.3 acres, a doubling of the coverage, with eelgrass growing closer to and surrounding the oyster racks. See Attachment 13 at 5-6. Moreover, independent scientists from both DFG and U.C.'s California Sea Grant have reported that the eelgrass beds appear very healthy. See

Attachment 13 at 6. Subsequent revisions to the NPS Report fail to reference any of the data presented in Dr. Goodman's testimony.

In analyzing the environmental interactions of DBOC's operations, the NPS Report repeatedly ignores substantial evidence of the positive interactions between shellfish and the estuary. The NPS Report includes a number of studies conducted outside Drakes Estero which document highly localized negative impacts associated with shellfish aquaculture activities. See Attachment 1 at 18 (citing studies by Cranford et al. and Everett et al., conducted in Canada and Oregon respectively). The NPS Report's glaring flaw is that it totally ignores a large body of relevant and recent research in the U.S., Europe, and Australia which documents beneficial effects provided by the filter feeding mollusks being cultured. These beneficial effects are important to include in the overall evaluation of environmental impacts in that they tend to mitigate any localized negative impacts attributed to culture activities, as well as incrementally reduce impacts from other anthropogenic activities around the estuary. A more comprehensive and balanced review of the literature offers insight into the interrelationships of shellfish with the marine environment and the nature of shellfish cultivation for food production, environmental enhancement and estuarine restoration. A review of this science is included in Attachment 12. None of these studies were cited within the NPS Report, despite the addition of negative studies throughout various revisions to the NPS Report. See Attachments 1-4 (reference sections).

The biased information presented in the NPS Report fails to meet the NPS Guidelines' objectivity criteria. Attachment 12 lays out this bias in particular detail by discussing an entire body of literature documenting beneficial interactions between shellfish and eelgrass, wildlife, and water quality. The NPS Report's complete disregard of any such findings do not measure up to NPS Guidelines that require maximized objectivity through accurate and unbiased information. See NPS Guidelines, Part III.A. and Part VI.C. (defining "objectivity").

- d. Statements concerning harm to the ecosystem from oyster racks' presence lack objectivity in presentation and substance.

The NPS Report draws inaccurate and incomplete conclusions regarding the introduction of the non-native species *Didemnum spp.* in Drakes Estero. The NPS Report compares the occurrence of *Didemnum* to George's Bank in the Northwest Atlantic to Drakes Estero, concluding that this presence "could alter Drakes Estero ecology." See Attachment 1 at 16-17.

This assertion fails to recognize that *Didemnum* can only exist on hard substrates and would not grow on either eelgrass or the sandy-bottom floor of Drakes Estero, information presented in Dr. Goodman's May 8, 2007 testimony and separately published by Thomas Yeatts in the Point Reyes Light. According to Dr. Goodman's testimony, Mary Carman at Woods Hole Oceanographic Institute reported that

these tunicates are endemic throughout the California coast; the tides are the most likely explanation for how the species entered Drakes Estero. Carman noted these tunicates exist on hard substrates, further asserting that *Didemnum* has not grown on eelgrass even in experiments conducted to force such growth. Additionally, Carman explained the comparison between Drakes Estero and George's Bank is not an equivalent, given that George's Bank has a rock and gravel bottom perfect for *Didemnum* growth, while the sand and silt of Drakes Estero would not support such growth. See Attachment 13 at 8-9. Yeatts reported a similar explanation from Carman in the Point Reyes Light. See Attachment 11 at 5. Yeatts also interviewed Andy Cohen, director of the Biological Invasions Program at the San Francisco Estuary Institute, who arrived at a similar conclusion regarding the inhospitality of Drakes Estero for development of *Didemnum* on surfaces other than the racks and the oysters themselves. According to Cohen, "Within Drakes Estero, the problem is probably more how it's going to affect the actual oyster operation." *Id.*

Recent revisions to the NPS Report fail to acknowledge both Carman's research and these academic opinions as to the benign presence of *Didemnum* within Drakes Estero. Specifically, Carman's opinion that *Didemnum* poses little threat to the biological habitat within Drakes Estero became public prior to the May 11, 2006 revision to the NPS Report on the NPS website. See Attachment 13. Statements within the NPS Report regarding harm posed by the presence of oyster operations fail to meet NPS Guidelines for objectivity in presentation and substance.

e. Statements concerning impact on harbor seals lack objectivity in presentation

The NPS Report makes unsupported and biased claims that increased oyster harvesting in Drakes Estero has decreased the harbor seal population. Specifically, the NPS Report cites personal observations by PRNS Scientist Sara Allen and park biologists about disturbances to seals by oyster operations, leading to a claim made in both the NPS Report and in public testimony that one sub colony declined by 80% in 2007. See Attachment 1 at 15-16; Attachment 8 at 4. However, many of these "personal observations" are unsubstantiated, most significantly the 2007 claims. See Part VI.3.d. of this complaint. Moreover, previous Harbor Seal Monitoring Reports, co-authored by Allen do not discuss disturbances from oyster operations. See Attachment 11 at 5-6.

As Thomas Yeatts summarized in his Point Reyes Light article, the 2006 Monitoring Report correlated annual seal population fluctuations with "food availability," and noted that from 2005 to 2006 (when the number of oysters harvested increased), the number of pups in Drake's Estero did not decrease. Of eight major pupping sites in 2006, Drakes Estero had the highest maximum count, at 347 pups. In the 2006 Monitoring Report listing of common disturbances, surveyors cited predators (bobcats and coyotes), hikers, recreational clam diggers, kayakers and "low flying large birds such as turkey vultures." Forty-seven percent of disturbances were

attributed to an "unknown cause." The 2006 Monitoring Report attributes no disturbance specifically to oyster operations. *Id.* In turn, the NPS Report attributes a 2007 disturbance exclusively to oyster operations, failing to reference disturbances by other predators observed in the 2006 Monitoring Report. See Attachment 1 at 15. See also Attachment 14 (May 2007 Research Summary of Harbor Seal Monitoring at PRNS noting that harbor seal population "may be at carrying capacity" and not listing oyster operations as a source of disturbance). The NPS Report's presentation of claims regarding oyster operation's impacts on harbor seal populations are incomplete, biased, and do not meet objectivity under NPS Guidelines.

f. The title of the NPS Report and subsequent assertions of Drakes Estero's management as potential wilderness fail to be objectively presented

The NPS Report title, *Drakes Estero: A Sheltered Wilderness Estuary*, inaccurately presents Drakes Estero as wilderness, in stark contrast to the Estero's actual designation as potential wilderness. The cover page of the NPS Report lists the title "Drakes Estero" prominently in the upper third of the document, immediately below the title appears a large photograph, and beneath the photo appears the subtitle, "A Sheltered Wilderness Estuary." See Attachment 1 at 1. While smaller font below the title correctly describes the waters of Drakes Estero as potential wilderness, the full title of the NPS Report misrepresents Drakes Estero as having wilderness status. Discrepancies between the NPS Report's title and content, which focuses on the waters of Drakes Estero designated "potential wilderness," are misleading and unclear. Despite recent removal of the NPS Report as a linked document from the NPS/PRNS website, the full title still appears in the Park Planning section.

Further, the NPS/PRNS website still inaccurately includes a page proclaiming, "Coming Soon! A Restored Wilderness Estuary." See http://www.nps.gov/pore/parkmgmt/planning_drakesestero.htm. The webpage discusses Drakes Estero's "Congressional designation as Wilderness" and asserts that Drakes Estero "will gain full Wilderness status in 2012." These statements are inaccurate, unclear, and incomplete, given the NPS Report's recognition of the waters' designation as potential wilderness and the fact that 2012 only represents the year DBOC's lease is set to expire. Both the language on the NPS/PRNS website and the title of the NPS Report imply that but for DBOC operations, Drakes Estero would appear to be wilderness. These statements do not accurately reflect that the whole of Drakes Estero is surrounded by active agricultural pasture lands.

2. The NPS Report does not utilize "transparent" methods "to the maximum extent practicable."

Both NPS Guidelines and Interior Guidelines require transparent methods to ensure quality information. See NPS Guidelines, Part III.A.; Interior Guidelines, Part II. In marked contrast

August 23, 2007

to these guidelines, the NPS fails to accurately document and verify the quality of claims against DBOC and oyster operations in the NPS Report, repeatedly failed to advise the public of revisions to the NPS Report, failed to send the report to DBOC or engage in discussions regarding the multiple versions, and absolutely failed to achieve sufficient transparency such that an independent reanalysis could be conducted.

a. Assertions within the NPS Report regarding harm by oyster operations are not accurately documented.

Dr. Goodman's report to Marin County Board of Supervisors identifies the NPS Report's failures to document claimed harms to Drakes Estero caused by oyster operations, specifically statements that oyster feces comprise sediment harming the Estero and, possibly, eelgrass beds. See Attachment 10 at 2-14. Additionally, Dr. Goodman highlights the NPS Report's inaccurate citation to Wechsler's 2004 master's thesis, noting that the NPS Report's assertion that oyster operations harm species diversity is contrary to the results published by Wechsler. See Attachment 10 at 16-21. Finally, the NPS Report fails to adequately document assertions regarding the declining harbor seal population in 2007, either within the NPS Report or in publicly available materials, and has withheld associated data in response to Dr. Goodman's recent FOIA requests. See Part VI.3.d. of this complaint.

b. NPS officials have not verified the quality of information disseminated.

As addressed throughout Part VI.1 of this request, the NPS Report contains numerous inaccuracies and mischaracterizations that do not meet the NPS definition of quality prior to dissemination. In fact, the Complainants have documented at least three revisions to the NPS Report, two as published on the NPS website, included as Attachments 1 and 2, and one as distributed to the Marin County Board of Supervisors, included as Attachment 4. The total number of versions is unknown to Complainants, in spite of a FOIA request recently submitted to NPS by DBOC, unanswered as of this time. Many of these inaccuracies and misrepresentations stand uncorrected throughout repeated versions of the NPS Report, and additional information that does not meet NPS quality standards are added in subsequent versions. The report by Dr. Goodman in Attachment 10 provides a specific example of how the claim of "documented" harm by oyster operations morphed throughout each version of the NPS Report. See Attachment 10 at 14-16. NPS officials' failures to verify the quality of information has been documented not only by Dr. Goodman, but also in three separate articles in the June 15, 2007 issue of the Point Reyes Light. See Attachment 11 (authored by Thomas Yeatts); Attachment 15 (authored by Peter Jamison); and Attachment 16 (authored by Bill Wigert, Dr. Goodman, and Mark Dowie).

c. NPS officials have not kept users informed of corrections and revisions.

As discussed immediately above and shown in Attachments 1 through 4, at least four versions of the NPS Report have been disseminated to the public since 2006. None of these versions are dated, none of these versions include clear indication that the NPS Report has been corrected or revised, and the webpage where the NPS Report has been publicly available includes no notice to these prior corrections and revisions. At no point have NPS or PRNS officials sent a copy of the NPS Report to DBOC, nor has DBOC been consulted about the NPS Report's content, in spite of the fact that NPS Report makes serious allegations about the impacts of DBOC's operations. Furthermore, NPS has failed to respond to questions from Representative Woolsey regarding the accuracies of the NPS Report, submitted to NPS over one month ago. The NPS Guidelines clearly state in Part III.A. that, "[t]he NPS will also keep users informed about corrections and revisions." Only since July 23, 2007, following a meeting called by Senator Diane Feinstein and attended by NPS, California Coastal Commission, California Department of Fish and Game, Marin County Board of Supervisors, and Kevin Lunny, has the NPS website offered any indication that the NPS Report is under review or revision. And, as described in Part VIII, the website's statements of inaccuracies are themselves inaccurate and incomplete.

d. A qualified member of the public has been unable to conduct independent reanalysis and has not produced substantially the same result.

Interior Guidelines specifically instruct in Part II:

Analytic results shall generally require sufficient transparency about data and methodology that an independent reanalysis could be undertaken by a qualified member of the public resulting in substantially the same results.

In a letter addressed to Senator Dianne Feinstein, attached hereto as Attachment 17, Dr. Goodman explains his attempts to conduct an independent reanalysis of the report in the manner described in the Interior Guidelines, his preliminary conclusion that he did not arrive at substantially the same results as NPS officials, and his inability to obtain further data to investigate the NPS Report's most recent claim regarding the 2007 decline in the harbor seal population. Dr. Goodman is not formally associated with the Lunny's or DBOC and has publicly proclaimed that he will not suppress any information or conclusions that support the position of NPS and PRNS regarding oyster operations in Drakes Estero. Dr. Goodman's credentials, which are listed within Attachment 13 at 1 and Attachment 10 at 2, certify him as a "qualified member of the public" attempting to conduct "an independent reanalysis."

3. The NPS Report includes information that is not accurate and not timely.

The NPS Report does not meet NPS Guidelines that require information be accurate, timely, and reflect the most current information available. See NPS Guidelines, Part III.B. Where information is not documented, NPS is to provide users with additional documentation or methods to access supporting documentation as appropriate. See NPS Guidelines, Part III.B. The NPS Report fails to meet these requirements for accuracy and timeliness in at least four ways.

- a. Statements regarding harm from oyster operations to eelgrass, species diversity, and invasive species are not accurate.

See Parts VI.1.a., VI.1.b., and VI.1.c. of this complaint.

- b. The NPS Report fails to document specific assertions regarding harm to eelgrass and biodiversity.

See Parts VI.2.a. of this complaint.

- c. NPS has failed to provide users with additional documentation regarding claims related to oyster operation's harm to the harbor seal population.

NPS denied a recent Freedom of Information Act ("FOIA") request for data related to claims that oyster operations now seriously threaten harbor seal pupping. See Attachment 17. These claims both appear in the NPS Report and were made publicly by PRNS officials, most notably at the May 8, 2007 Marin County Board of Supervisors meeting. See Attachment 8. The NPS Report references a recent decline in the harbor seal population, documented "[i]n March by park biologists." See Attachment 1 at 15. Dr. Goodman's attempts through a FOIA request to obtain the data used by NPS to reach this conclusion are documented in a letter to Senator Feinstein, attached hereto as Attachment 17. That letter explains both the inadequacy of the overall response by NPS, as well as the specific refusal to provide the underlying data regarding the 2007 harbor seal count. See Attachment 17 at 3-4.

Interior Guidelines specifically address how departments should proceed in situations where the public is denied full access to data. Such denial mandates rigorous robustness checks and in all cases, Interior Guidelines "require a disclosure of the specific data sources used and the specific quantitative methods and *assumptions* employed" (emphasis added). See Interior Guidelines, Part II.3. As highlighted in Dr. Goodman's letter to Senator Feinstein, NPS refused the requested data under the grounds of "deliberate process privilege" as these are "draft records pending the final annual report." See Attachment 17 at 3. However, NPS has published preliminary accounts in the NPS Report, see Attachment 1 at 15-16, and PRNS officials have publicly announced a declining population due to oyster operations. See Attachment 8. Whether or not NPS is justified in its claim of privilege, NPS Guidelines require a minimum disclosure of data source, methodology, and assumptions. The assumptions leading to these broad

conclusions that oyster operations are the sole and direct cause of harbor seal population decline are conspicuously missing from the response to Dr. Goodman's FOIA request.

d. Reference to NPS Management Policies are neither timely nor accurate.

The NPS Report references 2001 NPS Management Policies as directing "staff to actively seek to remove ... the temporary, non-conforming conditions that preclude wilderness designation (6.3.1 Wilderness Resource Management)." See Attachment 1 at 3. Not only is the NPS Report's reference to the 2001 version of the NPS Management Policies not timely, the previous directive differs substantively from the current version. The National Park Service adopted a revised edition of Management Policies on August 31, 2006, immediately prior to initial distribution of the NPS Report. The text of the current version of NPS Management Policy 6.3.1, dated 2006, differs strikingly from the 2001 text, stating:

The National Park Service will apply the principles of civic engagement and cooperative conservation as it determines the most appropriate means of removing the temporary, nonconforming conditions that preclude wilderness designation from potential wilderness. (emphasis added)

Nowhere in the 2006 Management Policy is there a directive to "actively seek to remove" temporary, nonconforming conditions. The specific directive is to apply "principles of civic engagement and cooperative conservation," which the NPS Report overwhelmingly fails to do.

Contrast the statements in the NPS Report with a recent NPS publication entitled *Stewardship Begins with People: An Atlas of Places, People, and Handmade Products*. That publication exemplifies NPS principles civic engagement and cooperative conservation by highlighting the works of "friends and neighbors" of NPS managed sites who demonstrate a commitment to sustainability. See Attachment 16 at 5. PRNS and specifically DBOC are highlighted in this publication. See Attachment 16 at 43-44.

VII. The NPS Report constitutes "influential scientific information" and should undergo peer review

The NPS Report meets the Office of Management and Budget's definition of "influential scientific information," which triggers the requirement that the NPS subject the information to peer review prior to dissemination. See 70 FR 2667. "Influential scientific information" is defined by the Office of Management and Budget as, "[information] that will have or does have a clear and substantial impact on important public policies or private sector decisions." *Id.* Part IV of this complaint describes some of the ways (those known to Complainants) that the NPS Report has substantially impacted the Complainants and been used to influence local permitting and regulatory decisions involving DBOC. See Attachment 8 (transcript of PRNS officials' testimony at the May 8, 2007 Marin County Board of Supervisors

Meeting). The July 2007 meeting called by Senator Feinstein regarding DBOC and PRNS reflects the clear impact the NPS Report holds over important public policies, including the continued operations of sustainable agriculture within Marin County and PRNS.

Both the content of the NPS Report and PRNS officials' utilization of this report establish that the NPS Report is influential scientific information requiring peer review. *See* 70 FR 2667. The NPS Report is a unique document with public significance far beyond the typical "scientific and scholarly activities commissioned to inform park management actions." *See* National Park Service Peer Review Agenda, <http://www.nps.gov/policy/peerreview.htm>. This report falls into one of the "very limited cases" in which NPS information influences novel, controversial, and precedent-setting information with significant interagency interest. *Id.* Accordingly, the NPS Report should undergo peer review prior to any further dissemination.

VIII. Recent Acknowledgment of Corrections from the NPS/PRNS Website Does Not Constitute Adequate Relief

The acknowledgment of corrections that now appears on the NPS/PRNS website does not adequately address the violations highlighted in this complaint. *See* Attachment 17. First, the acknowledgment only discusses two studies highlighted in the NPS Report, the study by Dr. Anima and the study by Wechsler. As this complaint demonstrates, the NPS Report includes pages of claims and citations to studies that are out of compliance with NPS Guidelines. Second, the acknowledgment states that the NPS "incorrectly interpreted" these reports. Part IV of this complaint highlights specific misrepresentations of data and conclusions from these two studies, in addition to several other studies; the acknowledgement incorrectly characterizes these misrepresentations of data as "incorrect interpretations." Finally, the acknowledgment's stated corrections of Dr. Anima and Wechsler's studies still violate NPS Guidelines. Dr. Anima's report is again cited out of context, inaccurately portraying his statements about oysters as derived from studies conducted in Drakes Estero. Dr. Anima never studied oysters in Drakes Estero and the correction should explicitly acknowledge this fact. Similarly, the attempted correction of Wechsler's study does not meet NPS Guidelines' definition of objectivity, as the acknowledgment still withholds his ultimate conclusion: Wechsler found no statistically significant difference between fish species diversity in an estero with no oyster racks and an adjacent estero with oyster racks.

IX. Relief Requested

Because of the clear violations of the NPS and Interior Guidelines set forth above, Complainants request the following relief:

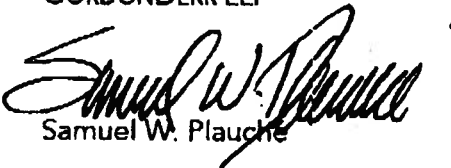
1. Complainants request a list of all federal, state, and local agencies, as well as professional societies and individuals, who received a copy of any version of the NPS Report from PRNS officials.
2. Complainants request specific corrections to all violations of the NPS Guidelines and Interior Guidelines with respect to all the issues raised in this complaint.

3. Complainants request a detailed acknowledgment that the NPS Report mischaracterizes scientific information and violates NPS Guidelines, Interior Guidelines, and the Data Quality Act with respect to the issues raised in this complaint.
4. Complainants request that all federal, state, and local agencies, as well as professional societies and individuals, who received a copy of any version of the NPS Report from PRNS officials receive a copy of both the detailed acknowledgment of violations and corrections as requested above in 2 and 3.
5. Complainants request the NPS Report be formally and publicly retracted as out of compliance with NPS and Interior Guidelines, which would include a full-page advertisement notifying the public of this retraction published in the Point Reyes Light.
6. Should the NPS Report be re-evaluated and corrected to meet the objectivity requirements identified in this complaint, Complainants request that any new versions of the Report undergo peer review.

Because of the immediate and significant impact that the NPS Report is having, and will continue to have, on DBOC's compliance process with the California Coastal Commission and on DBOC's reputation, which in turn impacts the entire industry, Complainants request that NPS issue its retraction expeditiously.

Very truly yours,

GORDONDERR LLP



Samuel W. Plauché

SWP:HRL
Enclosures

cc: Kevin and Nancy Lunny, Drakes Bay Oyster Company (w/encs.)
Robin Downey, Executive Director, Pacific Coast Shellfish Growers Association (w/encs.)
Mike Gale, President, Marin Farm Bureau (w/encs.)
Helge Hellberg, Executive Director, Marin Organic (w/encs.)
Peter Gleick, President, Pacific Institute (w/encs.)

Index of Attachments

- Attachment 1: *Drakes Estero: A Sheltered Wilderness Estuary*, National Park Service, published May 11, 2007
- Attachment 2: *Drakes Estero: A Sheltered Wilderness Estuary*, National Park Service, published March/April 2007
- Attachment 3: *Drakes Estero: A Sheltered Wilderness Estuary*, National Park Service, published Fall 2006
- Attachment 4: *Drakes Estero: A Sheltered Wilderness Estuary*, National Park Service, distributed May 8, 2007
- Attachment 5: Sarah Allen, Jules Evens and John Kelly, *Coastal Wilderness: The Naturalist*, Point Reyes Light, April 26, 2007
- Attachment 6: *Save Drake's Estero*, Coastal Post, May 1, 2007
- Attachment 7: Gordon Bennett, *Attack on wilderness here in the Bay Area: Oyster farm attempts to evade Drakes Estero wilderness deadline*, Sierra Club Yodeler, July-August 2007
- Attachment 8: Unofficial transcript of PRNS staff testimony at Marin County Board of Supervisors meeting, May 8, 2007
- Attachment 9: Letter to DBOC from California Coastal Commission, dated June 5, 2007
- Attachment 10: Corey Goodman, Ph.D, *Report #2 to the Marin County Board of Supervisors*, May 29, 2007
- Attachment 11: Thomas Yeatts, *Park misleads public on oyster farm research*, Point Reyes Light, June 15, 2007
- Attachment 12: Best available science omitted from *Drakes Estero: A Sheltered Wilderness Estuary*
- Attachment 13: Dr. Goodman's testimony before Marin County Board of Supervisors, May 8, 2007
- Attachment 14: *Harbor Seal Monitoring at Point Reyes National Seashore and Golden Gate National Recreation Area*, National Park Service, May 2007
- Attachment 15: Peter Jamison, *Drakes Bay Oyster Company has little impact on estero*, Point Reyes Light, June 15, 2007

- Attachment 16: Bill Wigert, Corey Goodman and Mark Dowie, *Opinion: A Local Assault on Reason: Seeking the Truth about Drake's Estero*, Point Reyes Light, June 15, 2007
- Attachment 17: Letter to Senator Dianne Feinstein from Dr. Goodman, dated June 27, 2007, and accompanying attachments to original letter (FOIA Appeal from Dr. Goodman, dated June 27, 2007 and FOIA Response from NPS, dated June 13, 2007)
- Attachment 18: *Stewardship Begins with People: An Atlas of Places, People, and Handmade Products*, Conservation and Stewardship Publication No. 14 (2007)
- Attachment 19: Acknowledgment of corrections, appearing on the NPS/PRNS website, http://www.nps.gov/pore/parkmgmt/planning_drakesestero.htm