

November 7, 2012

From: Dr. Corey S. Goodman

To: Todd J. Zinser, Inspector General, Department of Commerce

Re: Request that DOC OIG investigate allegations that Marine Mammal Commission Exec. Director Dr. Timothy Ragen, in the review and release, and later private reversal of the key conclusion, of his MMC Report on "Mariculture and Harbor Seals in Drakes Estero, California," violated MMC policies, FOIA, and the MMC Scientific Integrity Policy

Dear Inspector General Zinser,

I request that the Department of Commerce Office of the Inspector General (DOC OIG), initiate an investigation into allegations of misconduct by Dr. Timothy Ragen, Executive Director, Marine Mammal Commission (MMC). The complaint presented below alleges that Dr. Ragen violated MMC policies, rules, and guidelines, the Federal Freedom of Information Act (FOIA), and the MMC Scientific Integrity Policy. This complaint alleges:

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

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

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

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

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

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

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

In summary, Dr. Ragen's conduct was inappropriate and unethical. NPS employees were equally inappropriate, complicit, and active participants throughout a MMC review process that was anything but transparent, inclusive, and independent. Dr. Ragen established a public process with a veneer of fairness, balance, and independence, while his private activities subordinated that independence to the very entity being investigated and reviewed – the National Park Service.

Five specific allegations are presented here concerning Dr. Ragen's misconduct and deception involving his oversight of the MMC Report on "Mariculture and Harbor Seals in Drakes Estero, California" on November 22, 2011, and his private (concealed) reversal of the key conclusion from his MMC Report in a letter on June 17, 2012. It is alleged that:

- 1) Dr. Ragen Violated MMC Policies Established for Scientific Review**
  - a. Did Not Treat All Parties Equally But Had Biased Interactions with NPS
  - b. Did Not Conduct an Independent Review of NPS Data and Analysis
- 2) Dr. Ragen Changed MMC Terms of Reference Without Disclosure or Discussion**
  - a. Changed Scope, Title, and Purpose of MMC Report
  - b. Accepted Lack of Disclosure of Key Data and Paper by NPS
- 3) Dr. Ragen Violated the Federal Freedom of Information Act (FOIA)**
  - a. Failed to Disclose and Release Key Communications
  - b. Failed to Provide Basis for Failing to Disclose & Release Key Communications
- 4) Dr. Ragen Violated MMC Scientific Integrity Policy**
  - a. Did Not Follow Open Discussion, Open Dialogue, Open Exchange
  - b. Undermined and Avoided Meetings to Discuss Data and Analysis
- 5) Dr. Ragen Failed to Properly Disclose Reversal of Key Conclusion of MMC Report**
  - a. Reversed MMC Support of Key NPS Paper In a 'Private' Letter
  - b. Concealed Reversal While Claiming Key MMC Conclusion Was Unchanged

According to the MMC Scientific Integrity Policy filed on March 29, 2011 with Dr. John Holdren [Director, Office of Science and Technology Policy (OSTP), White House], the MMC has a cooperative agreement with the DOC OIG regarding investigations of the MMC. According to that 2011 policy, the DOC OIG agreed to conduct independent investigations of the Executive Director when appropriate given the circumstances. The serious allegations of misconduct and deception set forth in this complaint against the MMC Executive Director mandate that the DOC OIG undertake this investigation.

The above-cited MMC Report is being relied upon by NPS to help justify a pending Department of the Interior policy decision. The NPS has announced that in its final Environmental Impact Statement (EIS) for the oyster farm lease renewal at Drakes Estero, it plans to consider Dr. Ragen's MMC Report as an independent review of NPS science, and as a 'peer review' of the EIS section on harbor seal impacts.

As an elected member of the National Academy of Sciences (NAS), I listened the morning of April 27, 2009, as President Obama spoke to my fellow NAS members at our annual meeting. It was an historic speech – the first President to address the NAS since President John Kennedy. President Obama sent a powerful message about the integrity of science. The President spoke movingly of "*restoring science to its rightful place*" and the

need "to be sure that facts are driving scientific decisions." Toward that end, he established scientific integrity policies under the jurisdiction of the White House OSTP.

The 2011 MMC Scientific Integrity Policy states that MMC policies are intended to "ensure a culture of scientific integrity" and provide "independent expert analysis of scientific, policy, and regulatory issues consistent with the provisions of the Marine Mammal Protection Act."

Dr. Ragen abandoned the MMC policy filed with the White House at the very time he should have been guided by it. The Scientific Integrity Policy's directive of "honest investigation, open discussion, refined understanding, and a firm commitment to evidence" was not followed, nor did Dr. Ragen adhere to the directive that "the Commission actively seeks input from and open dialogue among all parties engaged in all issues ..."

Dr. Ragen was disingenuous to a U.S. Senator, the Marin County Board of Supervisors, independent scientists who became involved at the request of the County Supervisors, a community torn apart by NPS misconduct at Point Reyes, the press seeking the truth, the oyster farmer, and the farm's 30 workers whose livelihoods rest in the balance.

This case, with all of its details, boils down to the following three questions:

1. Did Dr. Ragen ignore his principles of transparency, inclusiveness, equal access, fairness, and independence, and sacrifice the impartiality of his MMC Report?
2. Did Dr. Ragen allow NPS to review NPS – effectively allowing a self-review – while publicly claiming the MMC Report was independent and without bias?
3. Did Dr. Ragen deceive the public in his MMC Report and his communications?

I end with a note concerning my affiliation. I have many professional affiliations as scientist, professor, educator, entrepreneur, executive, and venture capitalist. Those professional affiliations have shaped my life and provide the scientific experience and wisdom – as well as the scientific credentials and reputation (e.g., elected member of the National Academy of Sciences, professor at UCSF) – that I bring to this issue.

In coming forward with this complaint, I do so as independent citizen scientist, and I do so on behalf of truth, scientific integrity, and my commitment to public service at the interface of science and policy. That commitment is reflected by my service to the National Research Council (I chaired the NRC Board on Life Sciences for six years) and the California Council on Science and Technology (I serve as an elected member).

It is now clear that there were two faces to Dr. Ragen, one public and the other private. Dr. Ragen deceived the public to believe he was independent, and in so doing, violated his own MMC policies and misled elected officials in an ongoing public policy decision. There are profound implications in the misconduct described here, not just for the MMC and NPS, but for all Federal agencies that rely upon impartial and scholarly science for policy decisions. I pledge my full cooperation with your investigation.

Sincerely yours,



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