

March 11, 2013

From: Dr. Corey S. Goodman

To: Dr. John Holdren, Science Advisor to the President, and Director, White House
Office of Science and Technology Policy

Re: Response to the March 6 letter from Environmental Action Committee Executive
Director Amy Trainer concerning my March 4, 2013 scientific misconduct complaint

Dear Dr. Holdren,

On March 4, 2013, I asked OSTP to establish and oversee a high-level investigation of scientific misconduct involving three federal agencies (NPS, USGS, and MMC), all linked to misconduct by NPS. I wrote that scientific misconduct emanating from NPS threatens to undermine one of the hallmarks of your tenure as OSTP Director: the establishment and implementation of President Obama's Policy on Scientific Integrity.

My submission has come under attack by the Environmental Action Committee of West Marin (EAC) and others who do not share our view that the scientific method is core to the strength of our nation. Rather, they have an ideology and pre-determined agenda for which the ends justify the means. What we as scientists rely on as facts and data, they see as simply fungible inconveniences. If the real data get in the way, they can be changed as they wish. To them, data are a means to an end.

For NPS and their supporters, this is ideology, not science. Their goal is to get rid of the oyster farm from Drakes Estero by any means necessary. They are oblivious or are unconcerned that their false science also threatens the shellfish industry nationally and internationally, in contrast to a large body of good science showing that shellfish aquaculture is environmentally beneficial. Their agenda is to turn Drakes Estero into 'wilderness' – whatever the cost or collateral damage.

When they sought harbor seal disturbances to justify their agenda, it didn't matter that the independent harbor seal behavior expert at Hubbs SeaWorld, under direction and with assistance from USGS, reviewed the NPS photographs and said there was no evidence of oyster farm disturbances. USGS and NPS sequentially misrepresented the key findings in that report, falsely claimed the harbor seal expert found oyster farm disturbances where he found none, and NPS supporters accepted the USGS and NPS reports as scientific evidence for oyster farm disturbances.

When the ideologues sought data showing that an oyster skiff and an oyster tumbler were making so much noise as to disturb harbor seals from miles away, it didn't matter that they can only be heard for only a few hundred feet (something Secretary Salazar experienced first hand). NPS used a Jet Ski and cement mixer truck to misrepresent the skiff and tumbler, and concluded that oyster farm noise was having a "*major adverse impact*" on wildlife.

It didn't matter that the scientific data did not support these findings. It didn't matter that the NPS claim that the oyster tumbler could be heard for over 2.4 miles was so absurd that many tens of thousands of visitors to the farm, including the Secretary, know it was patently wrong and that the oyster tumbler can only be heard for a few hundred feet, and thus does not disturb wildlife. This too was ideology, not science.

In his speech to the National Academy of Sciences on April 27, 2009, President Obama stated "... *the days of science taking a back seat to ideology are over.*" But that is exactly what has happened at NPS, and for the Park Service and their supporters, such as EAC, ideology has taken the front seat, and science has taken the back seat.

This issue before OSTP is not about an oyster farm, and it is not about oysters or harbor seals. It is also, in contrast to what EAC wrote to you, neither about the Secretary's decision, nor the Federal Court rulings. Rather, it is about whether we as a nation are truly committed to returning science to its rightful place in the federal government.

Do the policies and regulations that you and the President, and Congress, established have any meaning? Are they mandatory as the President wrote, or discretionary as NPS Director Jarvis wrote? Jarvis has declared that NPS science is beyond accountability. Can you stand still and allow the Jarvis Doctrine to prevail?

How you or I feel about wilderness vs. oysters is immaterial. The issue that compelled my complaint, and should compel your review, rather, concerns the role of science in government, and whether science was misused by federal agencies "*intentionally, knowingly, or recklessly.*"

My principles and motivations have been clear from the outset when I first got involved in this issue in 2007. In early April 2007, NPS Superintendent Don Neubacher met with Marin County Supervisor Steve Kinsey. Kinsey reported that Neubacher made "*strong environmental accusations*" against the oyster farm and its owner, Kevin Lunny, including claims of overwhelming data of harm to harbor seals, and even claims that Lunny had "*committed environmental felonies.*"

A few weeks later, Supervisor Kinsey contacted me, based upon my scientific credentials, and as a local resident in West Marin. He knew me as an elected member of the National Academy of Sciences, biology professor at U.C. Berkeley, and someone who had historically participated in science-based public policy issues. For example, I chaired the National Academy of Sciences' Board on Life Sciences from 2001 to 2006, have served for many years on the California Council on Science and Technology, and in the 1990's helped resolve a Marin County conflict involving contamination of oysters in Tomales Bay, on the opposite side from an oyster farm and the California Department of Health Services, and instead siding with science from the Centers for Disease Control.

Supervisor Kinsey questioned the NPS scientific claims, and asked for my help in reviewing their data. He asked me to review the 'NPS claims vs. NPS data,' and to testify as an independent scientist at the County Supervisor's hearing on May 8, 2007 as to my findings.

When I testified, I did not know and had never met Kevin Lunny. I came to the hearing at the invitation of Supervisor Kinsey, and I testified on behalf of truth and scientific integrity. Those principles guide my involvement today just as they did on May 8, 2007.

At the hearing, I testified that NPS officials and scientists misrepresented their own data. My analysis showed that NPS data did not support NPS claims. I testified:

"The political process can be dangerously misled by bad or misused science. One of my greatest concerns when I see science being invoked in public policy debates is to make sure that it is good science and not pseudo-science or -- even worse -- a blatant misuse of science."

I cautioned:

“My only hesitation in coming forward to testify today is the realization that openly expressing my views as a scientist may cause me to come under personal attack by local groups that are determined to remove Lunny’s operation from the PRNS. Nevertheless I feel compelled to speak out for good science instructing public policy.”

With the letter submitted to you on March 6, 2013 by the Environmental Action Committee of West Marin (EAC), you see the embodiment of both issues I raised in 2007.

First, for EAC, the ends justify the means. The EAC has, as they wrote to you, been intimately involved in this issue, but for them, the issue has been their agenda to remove the oyster farm from Drakes Estero, whereas for me, the issue has been the misuse of science in bringing that agenda to fruition.

In their zeal to uphold what they interpret as *“the government’s promise to taxpayers to protect the only marine wilderness ...”* they – like the NPS – have consistently let their agenda drive the misuse of science. See the Appendix attached here for more details.

Second, as predicted in May 2007, openly expressing my views as a scientist has caused me to come under personal attack by EAC and others. They recently wrote to you:

“Dr. Holdren, we ask you please to treat Dr. Goodman’s accusations for what they are – a smear campaign meant to distort the public record and the credibility of multiple federal agencies, all while the company he advocates on behalf of seeks to monopolize one of the most biologically important areas on the West Coast.”

EAC Executive Director Amy Trainer accused me of being an advocate on behalf of a company to *“monopolize”* a biologically important area. This assertion is puzzling at many levels. At the very least, it is a mischaracterization of a family-owned oyster farm that has existed in harmony with the environment for over 80 years.

What does EAC mean when it accuses me of advocating to *“monopolize”* Drakes Estero? This word conjures up images of fences and no trespassing signs for people like you who may never have had the pleasure of visiting the pristine waters of Drakes Estero. Point Reyes National Seashore gets over 2.6 million visitors each year, and many of them enjoy Drakes Estero as hikers and kayakers. The three kayak outfitters wrote to NPS that not a single client – not one – has ever complained about the oyster farm. The EAC assertion is confusing – what is being monopolized, and who is doing the monopolizing?

Ms. Trainer cited a letter she wrote to Secretary Salazar on March 27, 2012 as evidence that I am conflicted and an advocate. In that (discredited) letter, she did indeed accuse me of being a lobbyist and advocate, but she did so by misrepresenting data, something she and NPS have been doing over and over again in the science arena. She wrote:

“Rather, he claims, his only concern is NPS’s use of science. Yet, Dr. Goodman himself is hardly neutral and is a vociferous advocate on behalf of DBOC. He is on record as lobbying for the continuation of oyster operations, which would require overturning long-standing law and policy.”⁴²

The single citation #42 used to justify Trainer’s *“lobbyist”* and *“vociferous advocate”* claim against me was a letter written in 2009 by my wife, not me, to the Marin County Planning Commission. Trainer misrepresented my wife’s letter by misuse of ellipses to intentionally alter the meaning. EAC characterized the letter as *“corr. From Dr. Goodman to Marin County Planning Commission: “We request that you ... support the protection of ... mariculture operations ... in the national park.”* What my wife actually wrote for the

County plan, in a letter largely focused on the public health and safety issues of granting public access to agricultural lands, was that she supported *“the protection of agriculture and mariculture operations on private property and in the national park”* as does 90% of our community.

The renewal of the oyster farm lease, in contrast to what Trainer wrote, requires no overturning of *“long-standing law.”* Ms. Trainer asserted it does overturn law, but that too was a misrepresentation.

Trainer’s citation of my wife’s letter was an irrelevant red herring to my long-standing concern for scientific integrity. Yet that was the very best EAC could come up with, and was EAC’s idea of ‘evidence’ showing my advocacy, worthy of a letter to the Secretary. This misuse of my wife’s letter symbolizes EAC’s idea of ‘evidence’ when it comes to science as well.

In EAC’s recent letter to you, I was accused of perpetrating a *“smear campaign.”* In a local newspaper two weeks ago, the EAC accused me of *“debasement”* the community for raising the issue of scientific integrity. The ad hominem attacks have become relentless.

One of EAC’s members accused me in a local newspaper of being *“BigAgra, BigPharma, BigPoliticalPR”* and called the issue of scientific integrity a *“sideshow.”* She went so far as to find a way to ridicule the house my wife and I built, and somehow relate this criticism to the issue of scientific integrity. EAC and NPS have accused me repeatedly of *“the politics of personal destruction.”* They accused me of a *“smear campaign.”* Who is being smeared here?

EAC’s leadership is so convinced as to the righteousness of their agenda that no policy, and no person, is allowed to get in their way. This is ideology, not science.

I wrote to you about scientific misconduct, President Obama’s Scientific Integrity Policy, and EAC responded by accusing me of *“a smear campaign.”* Why are they afraid of an open and transparent review of federal science by an independent panel?

The cover-up of scientific misconduct, when coupled with these ongoing ad hominem attacks, has had a corrosive impact on scientists throughout government. It sends a chilling message not to report the facts and data objectively as you find them, but rather to report data as someone else in a powerful position wants them to be reported. The cover-ups and attacks send a powerful message to keep quiet. Is this to be the outcome and legacy of President Obama’s Scientific Integrity Policy?

Some of the key scientific documents I obtained from government agencies over the past six years concerning this issue came from whistleblowers in Federal and State government who are concerned about the abuse of science by NPS, but are afraid to get involved for fear of retribution, retaliation, and losing their jobs. It is not healthy for science, and it is damaging to what you have been trying to accomplish at OSTP.

Given the EAC letter, and no doubt others you have received, I encourage you to ask four questions in considering whether the views of these wilderness advocates and non-scientists should play a role in your scientific deliberations.

- 1) Why are surrogates doing the bidding for federal agencies? The NPS, USGS, MMC, DOI OIG, and Scientific Integrity Officers should speak for themselves.
- 2) Why aren’t the federal agencies coming forward and embracing – in full openness and transparency – the proposal to review their science?

- 3) Why aren't federal agencies welcoming an open process of independent scientists adjudicating these issues, especially since they appear so convinced I am wrong?
- 4) Why are the surrogates of these federal agencies trying to stop you from overseeing an open scientific review? Of what are they afraid – the truth?

In the Appendix at the end of this letter, you will find brief responses to each of main points in the EAC letter. In summary, as I wrote to you on March 4, 2013, this issue requires your immediate attention and action. I request that:

- (1) OSTP establish a blue ribbon panel of eminent scientists, such as the President's Council of Advisors on Science and Technology, to conduct this investigation.
- (2) The panel should investigate these allegations in a transparent fashion, allowing both sides to respond to statements made by the other in an open fashion.

I look forward to discussing these important issues about science and scientific integrity with you.

Sincerely yours,



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cc:

Interior Secretary Ken Salazar
NPS Director Jon Jarvis
NPS Scientific Integrity Officer Gary Machlis
USGS Director Dr. Marcia McNutt
USGS Acting Director Dr. Suzette Kimball
USGS Scientific Integrity Officer Dr. Linda Gundersen
MMC Executive Director Dr. Tim Ragen
DOI OIG Acting Inspector General Mary Kendall
DOC OIG Inspector General Todd Zinser
U.S. Senator Dianne Feinstein
U.S. Senator Barbara Boxer
U.S. Representative Jared Huffman
State Senator Mark Leno
State Assemblyman Marc Levine
Marin County Board of Supervisors
DBOC Owners Kevin and Nancy Lunny
EAC Board Chair Bridger Mitchell
EAC Executive Director Amy Trainer

Enclosures (see also Appendix below)

Documents for allegations #1 and #2:

Stewart Report, May 2012
USGS Report, November 2012

Documents for allegations #3-5:

CSG to Zinser.11_07_12.cover letter.pdf
CSG to Zinser.11_07_12.complaint.pdf
CSG to Zinser.11_07_12.appendix.pdf
CSG to Muldoon.11_07_12.cover letter.pdf
CSG to Zinser.11_09_12.response to MMC.pdf
2012-12-19 (Signed Letter to Corey Goodman).pdf
2012-12-19 (Signed Letter to MMC).pdf

Appendix:

Responses to Major Points in the March 6, 2013 EAC Letter

1. EAC Cherry-Picked the Court Just Like they Cherry-Picked the Science

My submission to OSTP was about science, not politics and court rulings. The EAC's first heading in response to my submittal was "*The Secretary's Policy Decision and Federal District Court's Ruling.*" The EAC spent the first two pages of their eight-page letter, and much of their conclusion on pages 7-8, writing about the Secretary's November 29, 2012 decision to close the oyster farm and the February 4, 2013 Federal District Court ruling to deny the oyster farm motion for an injunction. This is all irrelevant to the scientific misconduct complaint. Nevertheless, it is interesting to see that EAC is consistent: EAC cherry-picked the court rulings just like they cherry-picked the science.

EAC concluded on page 7 that I misrepresented Secretary Salazar's decision. I did not, and regardless, the Secretary's decision is irrelevant to the issue of scientific misconduct. EAC argued that I am an advocate for both the oyster farm and Cause of Action to redefine the "*explicit reasons articulated by Secretary Salazar for his policy decision.*" I am not, and regardless, this false assertion is irrelevant to the issue of scientific misconduct. EAC asserted that my arguments redefining the Secretary's decision were "*unpersuasive,*" which was reassuring (and confusing), since I didn't make any such arguments. Perhaps if EAC read my letter more carefully, they would realize that the complaint addressed scientific integrity, not the Secretary's decision.

Finally, they argue that my allegations "*have been repeatedly rejected on the merits*" and here we simply disagree as to the difference of "*on the merits*" vs. a cover-up. **Allowing Interior to continually review itself, and manufacture far-fetched reasons not to find itself guilty of misconduct, is hardly the sort of independent review that you and I are accustomed to in the scientific community.**

The Interior Solicitor's Office failed to find that NPS employees committed scientific misconduct in failing to disclose the secret cameras, 300,000 photographs, and detailed logs. The Frost Report, however, concluded that five NPS employees violated the NPS Code of Scientific and Scholarly Conduct in doing so, but inexplicably called this violation "*administrative misconduct*" (a definition that has no precedent in federal policy) rather than "*scientific misconduct.*" Interior concluded no finding of scientific misconduct, but failed to mention the finding of administrative misconduct. Is that a rejection on the merits? Or is that making up a new definition so as not to find misconduct?

The DOI OIG, after the Frost Report was publically released, informed me that the NPS/Interior response to my complaint was inadequate for a variety of reasons outlined in Appendix 2 (pages 5-6) and Appendix 3 (pages 15-27) of my March 4, 2013 submittal. That was two years ago. As of this last December, the OIG considered the case 'open.' Perhaps 'abandoned' would be a better term.

On February 7, 2013, the Interior IG dismissed the allegation that NPS violated its own Management Policies 2006 by not directly measuring the noise emanating from oyster farm equipment, a mandatory regulatory requirement. How did NPS explain the regulatory failure? NPS told the IG that no one ever told NPS that oyster farm noise was an issue, and the IG accepted the NPS explanation and said they were exempt from the mandatory requirement. However, NPS wrote in the Draft EIS that they were in fact told. Moreover, NPS staff told the IG (as narrated in the IG report) that they were told.

Finally, during the scoping process, various EAC managers, board members, and members told NPS in writing, over and over again, that oyster farm noise was a problem.

Yet the IG accepted the NPS explanation that they were never told, even though evidence existed in the public record, and in interviews given to the IG, that the NPS explanation was incorrect. Nevertheless, the IG concluded that NPS did not have to make measurements, and were thus justified in using the Jet Ski to misrepresent the oyster skiff, and the cement mixer truck to misrepresent the oyster tumbler. Is that a rejection on the merits? Or is that accepting a far-fetched explanation so as not to find NPS guilty of not following a mandatory management policy?

The EAC letter purported to present you with a history of decisions and legal actions. Indeed, in December 2012, DBOC filed a lawsuit challenging Secretary Salazar's decision, and sought injunctive relief to block the 90-day shutdown. The EAC correctly reported that on February 4, 2013, the District Court ruled that it believed it lacked jurisdiction to review the Secretary's decision, and therefore, that DBOC was not entitled to preliminary injunctive relief.

But in their March 6 letter to you, EAC failed to mention that DBOC appealed the District Court ruling on February 6, 2013, and on February 25, 2013, nine days before EAC submitted their letter to you, the U.S. Court of Appeals for the Ninth Circuit overturned the District Court, writing:

"Appellants' emergency motion for an injunction pending appeal is granted, because there are serious legal questions and the balance of hardships tips sharply in appellants' favor."

The Ninth Circuit Court overturned the lower court and granted an injunction because there were "*serious legal questions*" (i.e., the issues of jurisdiction and law were not as clear cut as the District Court wrote) and the balance of hardships tips "*sharply*" in the oyster farm's favor. Inexplicably, EAC failed to mention this in their letter to you nine days later. This was not an oversight. It was a glaring omission.

Concerning the issue of whether the Secretary's decision did or did not rely on science, the EAC apparently applied the same flawed standard as did NPS Director Jarvis.

The Jarvis Doctrine and the EAC Doctrine appear to be one in the same. Jarvis recently made the case that NPS science is beyond accountability, and that neither the White House Scientific Integrity Policy nor Data Quality Act pertains to NPS documents, as long as they are not traceable to a policy decision.

Adhering to White House Policy is, according to Jarvis, a matter of "*discretion,*" not obligation. So long as NPS, and EAC, can plausibly deny that the science in the Final Environmental Impact Statement (FEIS) played a major role in the Secretary's decision, both believe that it is beyond accountability.

From the perspective of President Obama's Scientific Integrity Policy, the Jarvis Doctrine, openly embraced by EAC, is astonishing in its outright repudiation of the President's Policy and your four-year effort to implement it.

On August 7, 2012, Cause of Action, a Washington, D.C. nonprofit focused on government accountability, submitted a 71-page Data Quality Act (DQA) complaint to NPS on behalf of Kevin and Nancy Lunny and me. The DQA complaint focused on the scientific misrepresentations in the Draft EIS (DEIS).

On December 21, 2012, NPS Director Jarvis rejected the DQA complaint, and wrote:

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

Director Jarvis' characterization of the Secretary's reliance (or lack thereof) on the EIS were contradicted by the Secretary's public statements. Although the Secretary said the EIS was *"not material to the ... central basis"* for his decision, the Secretary also wrote that the DEIS and FEIS *"have informed me... and have been helpful to me in making my decision."*

The Secretary was informed by misrepresented data provided to him by Director Jarvis and NPS who initiated the National Environmental Policy Act (NEPA) process over two years earlier, reportedly spent \$2 million dollars, and produced a Final EIS of over 1,000 pages. Moreover, NEPA requires agencies to take a *"hard look"* at data and not publish an EIS that acts *"...as a subterfuge designed to rationalize a decision already made."*

Director Jarvis stated in his letter that regardless of whether a document intentionally misrepresented scientific data, that so long as it did not play a central role in a policy decision, that the document was untouchable (the Jarvis Doctrine – see quote above).

Under President Obama, and notwithstanding the policies the President and you established, Director Jarvis argued science that is wrong --- and in certain instances knowingly wrong -- can be released and broadly disseminated with impunity.

Moreover, Director Jarvis declared that NPS science is not subject to scientific scrutiny. He declared, in effect, that NPS science is *above the law and beyond accountability*.

As long as NPS denies that the scientific misconduct was central to a policy decision, NPS maintains they can evade the legal obligations of the DQA. The Jarvis Doctrine is the Director's justification for a lack of scientific integrity under his leadership at NPS.

Director Jarvis asserted, using his (unacceptable) criteria of plausible deniability, that the NPS FEIS *"will not be used in a decision-making process."* How can he know this?

Once a federal scientific document is released into the public domain, unless corrected or retracted, it can and will be used for years to come in decision-making processes throughout the nation, and around the world.

This is not hypothetical. It is already occurring. The false science emanating from the NPS DEIS and FEIS is already being cited and causing unnecessary harm to shellfish producers in several States in the U.S. and in Australia and New Zealand.

As I wrote to you on March 4, in a letter dated January 7, 2013, Dr. Robert Rheault, Executive Director, East Coast Shellfish Growers Association, wrote to Kevin Lunny (owner, DBOC) about the NPS EIS for the oyster farm in Drakes Estero, and stated:

"The NPS documents have already done great harm, and we can be certain that if they are not retracted or corrected they will continue to be used against the shellfish aquaculture industry at public hearings for years to come, both in this country and around the world. I personally know of two cases where the issues raised in the DEIS have already been used to quash oyster lease applications: one

in Alabama and one in South Carolina.

I was discussing your case with growers from Australia and New Zealand and they were quite concerned that the false claims of marine mammal impacts would be used to thwart leases in their countries as well. When government scientists make these assertions of impact, these claims seem to carry more weight than when they are made by an NGO or university researcher."

Another striking example involved the very court arguments and rulings that the EAC argued should lead you to ignore these issues of scientific misconduct. The EAC argued that science and the EIS played no role in the Secretary's decision and the District Court decision, and thus you should ignore my complaint.

The EAC neglected to mention the Ninth Circuit Court of Appeals. In the Ninth Circuit Court, the Department of Justice (DOJ) lawyers, arguing on behalf of DOI, on February 19 (over two weeks prior to EAC's letter) used the FEIS in their closing written arguments. If science was not important, then why was it the subject of their concluding argument in their brief?

In arguing to the U.S. Court of Appeals 9th Circuit that "*the public interest is strongly against an injunction,*" the DOJ lawyers presented the NPS FEIS as evidence of the "*environmental effects of DBOC's operations...*" on Drakes Estero. On page 20 of their filing with the Federal Court, the DOJ wrote:

"The FEIS also discussed at length the environmental effects of DBOC's operations, finding that DBOC's operations have "long-term moderate adverse impacts" on eelgrass, see Table ES-4 (Ex. 1) at liii; on native shellfish species, id. at lvi; on harbor seals, id. at lix-lx; and on birds, id. at lxi-lxii; and have "major adverse impacts" on the natural soundscape, id. at lxviii, and on wilderness values, id. at lxx."

The DOJ on behalf of the DOI told the court that NPS had found "*long-term moderate adverse impacts*" on harbor seals and "*major adverse impacts*" on soundscape.

This became a key issue in their final three-sentence conclusion in which they wrote that allowing DBOC to continue its operations would conflict with the public interest in enjoying the "*environmental quality of Drakes Estero.*"

The February 19, 2013 DOJ arguments with the U.S. Court of Appeals 9th Circuit showed that the environmental claims in the NPS FEIS are important to Interior, that they are being cited by the federal government, and therefore the Jarvis Doctrine – and now the EAC Doctrine – is in full force and that NPS documents are *beyond accountability*.

Director Jarvis, by his actions, effectively re-defined the applicability for the DQA, NEPA, and White House Scientific Integrity Policy. He nullified the Federal Policy on Research Misconduct. The Jarvis Doctrine asserts that NPS science is above the law and beyond accountability from any and all of these laws and policies.

If you accept the Jarvis Doctrine, embraced by EAC, and allow NPS scientific misconduct to stand and NPS science to be *beyond accountability*, then President Obama's Scientific Integrity Policy will have been functionally overturned. If allowed to stand, Jarvis will have single-handedly overturned the President's Policy, or at best, made it discretionary.

2. EAC Continued to Re-Write History

The EAC letter misrepresented the complaint submitted to you, mischaracterized my role, and rewrote history. According to the EAC (bottom of page 2):

“The DBOC and its staunch ally, Dr. Goodman, reiterate their well-worn and discredited arguments and continue their pattern of attacking any federal agency or employee with whom they disagree.”

The EAC re-wrote the history of what I submitted to you. The oyster farm did not file the complaint with you. I did. The allegations of scientific misconduct described in my letter to you were written by me as a scientist, not the oyster farm.

The allegations are about NPS misuse of science, not the oyster farm. EAC re-wrote history, and tried to reframe the issue away from NPS scientific misconduct and instead toward the oyster farm lease renewal. EAC continued to re-write history throughout their letter – a tactic that mimics NPS repeated conduct.

As I predicted in Appendix 3 (pages 23-27) of my March 4, 2013 letter to you, EAC then quoted from the Frost Report in an attempt, again, to tarnish my integrity. This was all very predictable, and very irrelevant to the allegations of scientific misconduct submitted to you.

The EAC selectively cited the Frost Report. They overlooked or excluded major critical findings in this internal Interior report, written by Interior about Interior. Even given the lack of independence, the Frost Report nevertheless concluded that NPS scientists had shown “bias,” “advocacy,” a “troubling mind-set,” “mishandled” data, and a “willingness to allow subjective beliefs ... to guide scientific conclusions.” The Frost Report concluded “this misconduct arose from incomplete and biased evaluation” and found that five NPS employees “violated [the] NPS Code of Scientific and Scholarly Conduct.”

The DOI inexplicably (and without precedent in any federal policy) defined a violation of the NPS Code of Scientific and Scholarly Conduct as a finding of “administrative misconduct” rather than “scientific misconduct,” thus allowing NPS and DOI to later assert that there was no finding of scientific misconduct. An Interior Department press release, issued when the Frost Report was made public, then boasted that there was no finding of scientific misconduct, which was both misleading and disingenuous.

The Frost Report cited no federal document for such a definition, nor any precedent for use of the term. Field Solicitor Gavin Frost admitted to me that he invented the concept of “administrative misconduct.” On the day Interior released the public version of the Frost Report, they also issued a press release exclaiming no scientific misconduct, failing to note, however, the finding of “administrative misconduct” to define a violation of the NPS Code of Scientific and Scholarly Conduct.

For a full analysis of the Frost Report, see Appendix 3 in my March 4, 2013 submission. For a discussion of the Frost Report criticisms of me, see pages 23 to 27 in Appendix 3 from my March 4 submission. As I wrote to you on March 4, 2013:

“There are a couple of sentences in the Frost Report that are conspicuous in their harsh description of me as the “informant,” and that are quoted by NPS supporters every time new misconduct is uncovered and a new complaint is filed concerning NPS scientific misconduct.”

EAC’s use of these statements in their March 6, 2013 letter to you, and in their March 27, 2012 letter to Secretary Salazar, raises important questions about the origin and intent of

these statements in the DOI Frost Report, which I raised on page 23 of Appendix 3:

“The Frost Report, publicly released by DOI in March 2011, made a number of uncomplimentary statements about me. Are those statements factually correct? Did Field Solicitor Gavin Frost have a factual basis for them? Did Mr. Frost actually write them? Were those statements contained in the initial version of his report submitted to the DOI Solicitor’s Office in early February 2011?”

On thing is certain. The critical statements in the Frost Report are contradicted by what Gavin Frost told me when he interviewed me on December 15, 2010, and they are contradicted by what Gavin Frost subsequently told me in several phone conversations, in which he has apologized for those statements. Understanding the statements in the Frost Report requires some historical context.”

I refer you to pages 23 to 27 of Appendix 3 for a full discussion of the historical context of those statements.

EAC next accused me of a “smear campaign.” That is just the tip of the iceberg of what they have called me. Those accusations are discussed in my cover letter above.

EAC cited (and attached) their March 27, 2012 letter to Secretary Salazar. That ten-page letter was so factually incorrect, and so misrepresented the truth, that several members of the media interviewed me about it, collected facts and documents relevant to its accusations, and found it without merit (and as a result did not publish anything about it).

One of EAC’s main accusations in their letter is that I have not been acting as a scientist but rather as a “lobbyist” and “vociferous advocate” for the oyster company. This accusation is also discussed in my cover letter. Please see that discussion of citation #42, the EAC’s so-called ‘evidence’ for their claim. The nature of their ‘evidence’ speaks volumes to their notion of ‘evidence.’

EAC then re-wrote history when it reviewed past misconduct complaints. They argued – incorrectly – in their four points on the top of page three that my allegations have been rejected on the merits by a number of federal agencies. The EAC wrote that my allegations have been:

- I. *“Found to be inaccurate, unreliable, and fundamentally flawed by the Executive Director of the U.S. Marine Mammal Commission,*
- II. *Dismissed by the National Research Council,*
- III. *Rejected by the U.S. Geological Survey, and*
- IV. *Found to be wholly without merit by the Interior Department’s Office of the Inspector General.”*

The EAC also scoffed at my claim that the MMC needed “bureaucratic oversight” and claimed that the “federal government should not be wasting more taxpayer money.” However, the EAC failed to acknowledge that the MMC lacks both an Inspector General and a Scientific Integrity Officer and thus has no scientific integrity oversight (in violation of the President’s Scientific Integrity Policy), and that it was MMC and the Department of Commerce OIG who recommended that I submit these allegations to OSTP.

First, as documented below, the EAC re-wrote history – the USGS and NAS made no such rejection in response to my allegations. EAC simply made up two of their four

cited rejections. The NAS publicly stated, in 2008 and again in 2009, that they would not address or opine on the issue of scientific misconduct.

Concerning the USGS, the EAC wrote that my allegations of misconduct were “*rejected by the U.S. Geological Survey.*” They made this up too – no such rejection occurred. USGS Director Dr. McNutt and I discussed these issues in December 2012. As a result, Dr. McNutt informed me that a review was initiated by the USGS Scientific Integrity Officer.

The USGS Scientific Integrity Officer failed to acknowledge the issue or respond to my inquiries (see Appendix 2, pages 13-15 of my March 4, 2013 letter to you), concerning USGS misrepresenting Dr. Brent Stewart’s analysis of the NPS photographs, and NPS then misrepresenting the USGS report in the NPS Final EIS. These serial misrepresentations, never before considered by any review, form the central issue of my submittal to you (see pages 2-4 and allegations #1-#2 in my March 4, 2013 letter).

Second, EAC asked you to ignore one of the key issues driving my complaint, namely that units of Interior (i.e., NPS, USGS, and the Solicitor’s Office), and units that are too cozy with Interior (e.g., the DOI OIG), appear either unwilling or incapable of independently reviewing scientific misconduct within Interior. That formed the background of my submittal to you. Rather than respond to my allegations, they have simply repeated – in many cases inaccurately – the findings from past studies.

Below I consider each of EAC’s four major assertions.

I. The EAC Misrepresented the Facts Concerning the MMC Report

In point #2, EAC wrote that my analysis was “*found in be inaccurate, unreliable, and fundamentally flawed*” by the Marine Mammal Commission. That is incorrect in light of the June 17, 2012 letter from MMC Executive Director Dr. Tim Ragen to me. I refer you in particular to Table 2 (based on analysis by NPS). For a full discussion of this letter, and the implications of Table 2, I refer you to the documents

“*CSG to Zinser.11_07_12.cover letter*” and

“*CSG to Zinser.11_07_12.complaint*”

that I provided OSTP via TransferBigFiles (enclosed here).

It is important to note that I neglected to provide you with one additional file:

“*CSG to Zinser.11_07_12.appendix*”

that was included with the other two in my original submittal to Department of Commerce IG Zinser on November 7, 2012. This appendix directly addressed Dr. Ragen’s June 17, 2012 reversal, and points out the inaccuracy of the statements about Dr. Ragen’s letter in the March 6, 2013 EAC letter to you. I include all three documents here.

In response to the OSTP policy directive on scientific integrity, the MMC filed its Scientific Integrity Policy with OSTP on February 14, 2012 in which the agency claimed they had a cooperative agreement with the DOC OIG to conduct independent investigations of the MMC Executive Director when required. Based upon the MMC Policy filed with OSTP, I submitted my complaint to the DOC OIG on November 7, 2012. However, as I wrote to you in my March 4, 2013 letter (see Appendix 2, pages 2-3), on December 19, 2012, the DOC OIG responded that MMC was mistaken, that no such

agreement existed, and that the DOC OIG had no jurisdiction over MMC. The DOC OIG returned my complaint and recommended that I submit my complaint to OSTP.

The MMC has no IG. The MMC has no Scientific Integrity Officer. According to both the MMC General Counsel, and the DOC OIG, the only place to submit a scientific integrity complaint involving the MMC is OSTP (see the cover letter, complaint, and appendix of what I submitted to DOC OIG Zinser in November 2012).

II. The EAC Misrepresented the Facts Concerning the NAS Report

The EAC also misrepresented the August 2012 NAS Report. If the EAC letter is to be believed, then NAS was asked to review allegations of misconduct, reviewed them, and dismissed them. However, NAS did not address misconduct. Moreover, I had nothing to do with the NAS review and did not participate in its proceedings. I requested an opportunity to appear before the panel, but my request was turned down.

The NAS review did not originate with me. The NAS review, a peer review of NPS science in the Draft EIS (DEIS), was initiated by Congress. The House-Senate Appropriations Committee, in the Continuing Resolution Conference Committee Report, questioned the “validity” of NPS science at Drakes Estero and directed the NAS to conduct a peer review.

The resulting NAS review, released in August 2012, did not address scientific misconduct. And contrary to EAC’s assertion, the NAS did not reach conclusions on scientific misconduct. On March 19, 2009, during the NAS’ first review of NPS science at Drakes Estero, Dr. William Colglazier, then-Executive Officer, National Academy of Sciences, posted a press release stating that the NAS “*will make no such determination*” concerning potential scientific misconduct. In summary, the EAC’s second point that the NAS “*dismissed*” my allegations of scientific misconduct is false.

III. The EAC Misrepresented the Facts Concerning the USGS Report

The EAC, in its third assertion, stated that my allegations were “*rejected by the U.S. Geological Survey.*” That is incorrect – to my knowledge, no such rejection has occurred.

The USGS Scientific Integrity Officer failed to respond (see Appendix 2, pages 13-15 of my March 4, 2013 letter to you), and the issue of USGS misrepresenting Dr. Brent Stewart’s analysis of the NPS photographs, and NPS then misrepresenting the USGS report in the NPS Final EIS, is one of the central issues on my submittal to you (see pages 2-4 and allegations #1-#2 in my March 4, 2013 letter).

The EAC letter then went on to misrepresent the Stewart Report, the USGS Report, and the NPS FEIS citation of those reports, and the NPS finding in the FEIS based upon them. The EAC letter is inconsistent with what is stated in those reports, and with how USGS then-Director Dr. Marcia McNutt and Deputy Associate Director Dr. William Lellis described the Stewart and USGS Reports to me in conversations in December 2012.

The EAC misrepresented this issue and avoided addressing the allegations of scientific misconduct. I previously included all relevant reports via TransferBigFiles [see cover March 4, 2013 letter (pages 2-4) and Appendix 1 (pages 1 to 13)].

IV. The EAC Misrepresented the Facts Concerning the IG Report

The EAC's misrepresentation of the February 7, 2013 Interior IG Report occurred in a different manner. According to the fourth assertion in the EAC letter, my allegations concerning scientific misconduct involving the soundscape section of the Draft EIS were "*found to be wholly without merit*" by the Interior IG in their recent report. That is a correct, albeit misleading, statement.

In my March 4, 2013 letter, I alleged that the recent IG report went to great lengths to dismiss the allegations, altering and ignoring some allegations, creating straw-man arguments, cherry-picking law and policy, and accepting explanations and testimony despite evidence to the contrary – evidence in the form of documents and emails.

The IG report was, in summary, a cover-up and whitewash. I submitted a 59-page analysis of the IG report in Appendix 4. I summarized that 59-page analysis in Appendix 3, pages 32-38.

The DOI OIG responded to the misconduct complaint on February 7, 2013. The IG dismissed all allegations of misconduct concerning the soundscape data. The IG inexplicably accepted the NPS use of a Kawasaki 2-stroke, 750 cc, 70 horsepower (HP) Jet Ski to misrepresent the 4-stroke (quieter), 360 cc (smaller), 20 HP (less powerful), oyster skiff; and a 400 HP cement mixing truck to misrepresent the plastic oyster tumbler with a ¼ HP, 12-volt (much quieter, smaller, less powerful) electric motor.

On pages 34-35 of Appendix 2, I wrote that the DOI OIG:

- 1) *"Did not conduct a proper investigation, showed bias, and compromised the independence of the IG process;*
- 2) *Altered my complaint by a distorted restatement of his allegations;*
- 3) *Failed to respond to selected allegations in my complaint;*
- 4) *Created straw-man allegations that I never made;*
- 5) *Cherry-picked law and policy (ignored the mandatory NPS Management Policies 2006 – the basis of my allegation #1) and in violation of these policies, accepted the use of proxies in lieu of easily-obtained direct data;*
- 6) *Derived numbers from these inappropriate proxies that common sense and direct experience (of NPS and OIG) shows are exaggerated, and NPS "best available science" shows clearly are not;*
- 7) *Accepted explanations from NPS and VHB staff, and key outside consultants, that are contradicted by documents and emails in the possession of the IG;*
- 8) *Arrived at conclusions that were contradicted by testimony and documents cited elsewhere in the IG report;*
- 9) *Cherry-picked quotations and citations from key documents and falsely attributed statements to Dr. Goodman that are not contained in his 270-page submittal; and*
- 10) *Made serious errors of fact because the IG did not properly fact-check its report, something it promised to do with me and Kevin Lunny but did not."*

Below I consider three of the six allegations that I submitted to the DOI OIG. The IG inexplicably dismissed all three of them. Concerning two of the allegations, the EAC made written statements in the past year that support the allegations and are

inconsistent with the IG report, yet the EAC praised the IG report. Concerning the third allegation, the EAC ignored the documents and emails that I submitted to OSTP on March 4, 2013 that demonstrated that the IG erred in dismissing the allegation.

Goodman's Allegation #1: "Failed to follow NPS Management Policies 2006 and Director's Order #47."

The EAC board chair, Bridger Mitchell, published a column in the February 28, 2013 issue of *The West Marin Citizen* newspaper in which, on behalf of EAC, he praised the recent Interior IG report, which dismissed all of my allegations.

I alleged that NPS "*failed to follow Management Policies*" in the Draft Environmental Impact Statement (DEIS), mandatory policies that direct Park managers to measure human sounds. Using the Jet Ski to misrepresent the oyster skiff, and the cement truck to misrepresent the oyster tumbler, was a violation of these mandatory regulatory policies.

The IG dismissed this charge by concluding that NPS did not have to follow these mandatory policies since oyster farm "*noise emissions had never been named as having a potential impact*" on wildlife. Park staff told the IG that during the scoping process, they had no idea noise was an issue.

The OIG accepted the NPS explanation, and presented it in their report without reference to the specific mandatory requirements of NPS Management Policies 2006 in Chapter 4.9.

Mr. Mitchell told the *Point Reyes Light* newspaper in an interview several weeks ago that when he kayaks on Drakes Estero, there are "*very loud radios and motorized equipment.*" During the scoping process in 2010, EAC Executive Director Ms. Trainer and others submitted similar comments about so-called loud motorboats, radios, and pneumatic drills. Their comments led NPS to write: "*As identified during public scoping ... motorized boats and pneumatic drills create noise*" that impacts wildlife.

When NPS staff told the IG that they never had any idea that oyster farm noise was an issue, they apparently overlooked EAC's scoping comments, and their own statements in the DEIS. Did the IG reject this allegation based on the merits?

Goodman's Allegation #2: "Made false representations of key acoustic data in Chapter 3 of the DEIS."

Mr. Mitchell's praise for the IG report is also in conflict with what Ms. Trainer previously wrote to the Department of the Interior. I alleged that NPS inappropriately used the Jet Ski to misrepresent the oyster skiff. Ms. Trainer disagreed and wrote that NPS would never import Jet Ski data from New Jersey and claim it was from the oyster skiff.

While citing their (discredited) March 27, 2012 letter to Secretary Salazar, EAC failed to cite their (equally discredited) April 2, 2012 letter to Interior Scientific Integrity Officer Dr. Ralph Morgenweck. In the April 2, 2012 letter from Ms. Trainer to Dr. Ralph Morgenweck, she scoffed at my allegation that NPS had used the Jet Ski to misrepresent the oyster skiff, calling it "*highly inflammatory,*" incorrect, and said it would be unthinkable to suggest that NPS would use as a proxy "*a completely different boat at a completely different distance at a completely different speed and throttle.*"

The IG report, however, confirmed what I had claimed, namely, that NPS had indeed used the Kawasaki 2-stroke, 750 cc, 70 horsepower (HP) Jet Ski as a proxy for the DBOC oyster skiff with a 4-stroke, 360 cc, 20 HP engine. Ms. Trainer wrote it would have been absurd for NPS to use the Jet Ski to misrepresent the oyster farm skiff, but that is what NPS did. In contrast to what Trainer wrote, however, the IG inexplicably found nothing wrong with NPS using the Jet Ski, and dismissed the allegations. Did the IG reject this allegation based on the merits?

The dismissal of my allegations against NPS isn't the first time Interior's IG has been accused of "*pulling punches*" (a term used by the Public Employees for Environmental Responsibility or PEER in their October 9, 2012 press release regarding a DOI OIG internal survey that raised doubts on the independence of the Interior IG).

Just a few weeks after the IG report was released, and nearly one week before Mr. Mitchell published his column in the *Citizen* congratulating the IG report, the House of Representatives Committee on Natural Resources did just the opposite. They released a highly critical 75-page report in which they faulted the Interior watchdog for "accommodating" Interior leadership.

Goodman's Allegation #6: "Knowingly deceived the public and peer-reviewers in the DEIS."

Finally, the EAC inexplicably focused on the IG interview with Dr. Christopher Clark from Cornell University, the scientist who peer reviewed the soundscape section of the DEIS. The EAC underlined and italicized a portion of the IG account of that interview (page 7 of the EAC letter) in which the IG Report stated:

"We told the peer reviewer that the complainant quoted him as stating: "I am not in agreement with the National Park. Given what you've told me about the numbers in Table 3-3 and the [Environ] report, I would conclude that there is no biological impact of the oyster farm on wildlife." The peer reviewer was unable to recall making this statement to the complainant and said he did not agree with its conclusion."

This entire section of the EAC letter concerning the IG report (from pages 5-7), and specifically this quotation on page 7, reveals that the EAC either did not read or did not comprehend my March analysis of the IG report (Appendix 4). They repeated the arguments from the IG report, but ignored the documents and emails that refuted those arguments, and showed that the IG accepted Dr. Clark's testimony that was contradicted by documents and emails in the IG's possession (see Appendix 4, pages 31-44, March 4, 2013 submittal to OSTP).

For example, as quoted on page 7 of the EAC letter, the IG accepted Dr. Clark's statement that he never told me in our phone call on the morning of March 21, 2012 that given the data, he would conclude "*that there is no biological impact of the oyster farm on wildlife.*" However, as I wrote to you on March 4 (Appendix 4, page 38), Dr. Clark's statement to the IG was contradicted by an email from Dr. Clark to me that the IG was provided during their investigation. Dr. Clark made virtually the same statement to me by email a few hours after our phone call on March 21 when he wrote:

"I do not believe that these activities [of the oyster farm] have a biologically significant impact on wildlife..."

The IG also accepted Dr. Clark's statement:

"He told us that he knew some of the actual data in the DEIS were representative or proxy data for Company equipment, while other information was derived from the Company."

Dr. Clark's statement to the IG was contradicted by:

- (1) His review of the DEIS soundscape section in the Atkins peer review (Appendix 4, pages 34-35) in which he wrote that *"Table 3-3 shows noise level values within close proximity to specific DBOC noise sources"*;
- (2) Dr. Clark's telephone conversation with me on March 21, 2012 (Appendix 4, pages 36-37) in which he told me that he believed the numbers in Table 3-3 came from the oyster farm in Drakes Estero, and when told they were from a Jet Ski from the New Jersey shore and from highway construction equipment, he told me *"I was deceived"*;
- (3) Dr. Clark's published interview with Greenwire on March 21, 2012 (Appendix 4, pages 37-38) in which he said he believed that the data in Table 3-3 in the DEIS *"represented measurements taken from DBOC [oyster farm] activities"* and
- (4) Dr. Clark's emails to me on March 21, 2012 (Appendix 4, pages 38-41) in which he acknowledged that he had not known the data came from the New Jersey shore and not Drakes Estero, and he then asked: *"Was this deliberate, or just the result of someone cutting and pasting and not understanding sound, sound levels, dBA etc.?"*

These four statements, each supported by documents, published interviews, detailed contemporaneous notes, and emails, all contradict Dr. Clark's statements to the IG. Nevertheless, although in possession of this evidence, the IG accepted Dr. Clark's statements, apparently did not follow up and question him about these documents and emails, and dismissed the allegation that he was deceived. The EAC ignored this written record. Did the IG reject this allegation based on the merits?

The EAC either failed to read Appendix 4, or chose to ignore it, in submitting their March 6, 2013 letter to you.

Conclusions

The EAC re-wrote history, misrepresented facts, cherry-picked facts, and ignored documents, emails, and even their own previous written statements. Much like the NPS, for the EAC, facts are simply fungible inconveniences that can be changed as they wish. Nothing in the March 6, 2013 EAC letter should dissuade you from undertaking a complete and thorough scientific review of the allegations of scientific misconduct against NPS, USGS, and MMC.

The extent to which NPS is relying on surrogates in an attempt to deflect criticism and tarnish the person submitting the complaint should make you suspicious that they are trying to cover-up their serial cover-ups. As a top scientist and the President's senior science advisor, you should be skeptical of such smear tactics, be reminded that as scientists, facts are our friends, and ask to see the data and review the allegations.

If only a portion of what I have alleged to you is correct, then President Obama's Scientific Integrity Policy is under siege at the Department of the Interior. If NPS Director Jarvis' declaration that the science policies from you and Congress are

discretionary and not mandatory over at Interior is allowed to stand, then what you stand for as a scientist and a leader, and the hallmark of your tenure as Director of OSTP, will have been undermined. It is time for OSTP to restore science to its rightful place.