

Testimony of Kevin Lunny
President, Drakes Bay Oyster Company
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Hearing: “Zero Accountability: The Consequences of Politically Driven Science”
House Natural Resources Committee, Subcommittee on Oversight and Investigations

Good afternoon Chairman Gohmert, Ranking Member Dingell, and members of the Subcommittee.

My name is Kevin Lunny. My family owned the Drakes Bay Oyster Company and operates the “G” Ranch at Point Reyes National Seashore in Marin County, California. On behalf of the entire Lunny family, our thirty workers who lost their jobs, and the overwhelming majority of citizens in West Marin, I am here today to tell you our story.

On December 31, 2014, the National Park Service forced our iconic eighty-year-old oyster farm to shut down. Let me be clear, we did not fail as a business. This was not bad luck. Rather, the Park Service engaged in a taxpayer-funded *enterprise of corruption* to run our small business out of Point Reyes.

Our family experienced the worst of what a motivated federal agency can do to a small business. We incurred millions of dollars in expenses and debts defending our farm from relentless misrepresentation, deception, and the complicit participation of multiple federal agencies. These actions culminated in an Environmental Impact Statement preparation process that can only be described as *weaponized*.

The history of procedural and ethical missteps by the Park Service at Point Reyes is stunning in its complexity and boldness. From the beginning of our stewardship of the farm, false science has been used as the primary tool to divide our community, intimidate government officials, and ostracize our family. Our family run oyster farm became ground zero for scientific misconduct in the United States. No leaders at the Park Service were willing to stop this campaign of false science, and no agencies outside of the Park Service were willing or able to step in despite countless guidelines, policies, and codes of conduct governing the application of science in the Federal government.

It is important to understand that Point Reyes National Seashore is not a typical Park Service unit. Point Reyes has been settled for almost two centuries, with ranches dating back to the California Gold Rush, and our oyster farm sited squarely in the middle. The Seashore was created in part to preserve that unique working landscape. Its original authorization by Congress in 1962 was secured through a partnership of agricultural and environmental interests working to prevent development spreading rapidly up the coast from San Francisco. Point Reyes isn't Yosemite. It was never intended to be.

Contrary to this historic intention, Park Service management and interpretation of policies changed around the early 2000s. No longer was agriculture at Point Reyes viewed as a benefit to the Seashore. Instead, we became the scapegoats in every new issue. Our existence was suddenly a problem - a roadblock in the new ideological pursuit of pure Wilderness, free from “non-conforming” uses like agriculture and mariculture. In an effort to drive those uses from Point

Reyes, starting with DBOC, they accused us of all manner of sins. The pattern became quite familiar. First the Park Service would make false claims - either in public hearings, as they did before the Marin County Board of Supervisors, or in interviews and press statements, published studies, or reports, Then, when confronted with evidence refuting their claims, they would ignore the data, refuse to correct the record, and simply move on. The process would then repeat itself. Senator Feinstein described it as “deceptive and potentially fraudulent” in a letter to then-Secretary of Interior Ken Salazar.

The Park Service campaign against us began in earnest in early 2007, when they publicly claimed that DBOC was responsible for an 80% decline in harbor seals in Drakes Estero. Not only did the Park Service lack scientific data to support such a serious claim, but they acknowledged in an email to NOAA just before the hearing that no actual records of harm existed.

Another early claim by the Park Service was that sedimentation from oyster production was upsetting the ecological balance in the Estero and cited a 1991 USGS study as proof. According to that USGS study, and affirmed by the State Health Department, the water bottom of the Estero was and is healthy. Regardless, the Park Service misrepresented that study -- they instead attempted to demonstrate harm by substituting data from a sixty-year-old study conducted at the Sea of Japan and attributing it to our farm.

Perhaps most telling of all, the Park Service embarked on a covert surveillance operation of Drakes Estero, a fishing expedition seeking justification for their unsupported claims of disturbance. The results were only discovered years later and following multiple unfulfilled FOIA requests. The covert cameras were focused on our boats and our oyster beds in Drakes Estero, and captured hundreds of thousands of photos, as often as one photo per minute. Once it was determined that these photos exonerated us, the Park Service hid them from the Marine Mammal Commission and National Academy, and excluded them from the EIS process.

Following publication of the so-called Final EIS, these covert photos reappeared as the subject of a USGS review. That report, and its subsequently altered findings, were recently featured in a January 2015 article in Newsweek (“The Oyster Shell Game,” by Michael Ames, January 18, 2015). As reported in the article, Dr. Brent Stewart (the marine biologist and seal expert with the Hubbs-Sea World Research Institute) was enlisted by USGS to perform an analysis of the photos. Stewart’s independent conclusion was that the Park Service photos showed no disturbance to seals by DBOC operations - that conclusion, according to Newsweek, was altered in the final USGS report commissioned by the National Park Service. The USGS report inferred that there were in fact some potential disturbances by DBOC boats -- a clear change from Stewart’s original findings. In the story, Stewart says the following:

“Its clear that what I provided to them and what they produced were different conclusions and different values. In science, you shouldn’t do that.”

Specifically, Dr. Stewart stated that his original phrase, “no evidence of disturbance,” was changed to read “were associated with boat activity.” Months later, USGS asked Dr. Stewart to re-verify his findings, which he did. Despite this reiteration of his finding of no disturbance, USGS and the Park Service moved forward with their altered version, going a step further in the never-completed Final EIS by implying causation of disturbance to the seals at the hands of our boats. This causation was explicitly ruled out in Dr. Stewart’s original, unaltered work.

According to the article, when Dr. Stewart discovered the altered conclusion and asked USGS to correct it, the response he got was: “*No, it’s done. It can’t be changed.*”

“*That was a bit shocking,*” Dr. Stewart said.

After building this multi-year record of false accusations against us, the Park Service manipulated the NEPA process initiated to renew our permit. In September 2010, Department of Interior Regional Solicitor Barbara Goodyear and Point Reyes National Seashore Superintendent Cecily Muldoon informed DBOC at a meeting that a NEPA review was required to consider our request to extend our lease and that the Secretary had already determined that a full Environmental Impact Statement would have to be prepared (a highly irregular decision for a simple permit renewal to continue an ongoing activity that’s been in place since 1934).

In an attempt to make amends for past misconduct and start fresh, Park Service Director Jon Jarvis negotiated and executed a Statement of Principles with DBOC to guide the process. We were to have a seat at the table. It was to be a working partnership. It was nothing of the kind. We were told little, asked less and there was no working partnership of any kind. Instead, it became evident that a pre-determined outcome remained the agenda.

Repeatedly during preparation of the EIS -- and despite protests from a wide range of interested parties and observers -- the Park Service doubled down on its use of manipulated data. The harbor seal disturbance, sedimentation, and more, were compiled into a Draft EIS.

For example, in assessing the noise impact of our small outboard motor boats, the Park Service, rather than measuring our boats on our soundscape (as required), instead used the measurements from a seventy-horsepower, 700cc Kawasaki jet ski in New Jersey. When describing how our oysters caused sedimentation in the Estero, the Park Service again chose not to use site-specific information, instead substituting data from a 1955 study from Japan. It should be noted that NPS formal management policies mandate site-specific measurements for use in these kinds of studies - obviously not followed in this EIS process. The Park Service never corrected the record, and was never held accountable.

The Park Service enjoyed free reign to manipulate processes, data, and policy at Point Reyes. In fact, the Park Service never officially completed the NEPA EIS process. After two years and more than \$2,000,000 spent, the final draft was published without a Record of Decision or notice in the Federal Register. There was no final comment period. Further, the unofficial final version

of the EIS was never submitted to EPA for review as required by regulation. The Park Service never even sent us a copy of the so-called “Final” EIS. These omissions did not prevent the Park Service from using the incomplete document as a weapon against DBOC. The Secretary of Interior, in deciding our oyster farm would be closed, indicated that he was disregarding the flawed data and utilizing only those parts of the EIS that were sound - in his sole discretion. As if to add insult to injury, the Justice Department submitted approximately 250 pages of this document as evidence during our challenge of the permit denial in Federal Court. In that submission, DOJ referred to the incomplete document as a “valid EIS,” a term without meaning in the NEPA process.

Perhaps most shocking to us -- as newcomers to such a complex process -- was learning, one investigation at a time, that there was no way to stop the Park Service from executing their agenda. When we first heard the Park Service staff make false accusations against us back in May 2007, we went to the Park Superintendent to correct what we thought was a simple mistake. The local Park Service staff were not willing to correct the false claims, so we went to the Regional Director. No help there. Then we went to the Park Service Director, and finally the Secretary of Interior. No one, at any level, was willing to admit that false science was being used against us, or to at least correct the record and stop the false accusations.

Numerous Data Quality Act complaints were filed asking the Park Service to correct the record of false science – with no relief. The Department of Interior Inspector General investigated and found misconduct and deliberate misrepresentation of facts, yet failed to actually stop misconduct or force a correction of the record. Instead, the three Park Service employees cited in the Inspector General’s report have since been rewarded for their work with promotions and greater responsibilities. The National Academy of Sciences conducted two studies on the science in our case, and the Marine Mammal Commission did one. Despite nearly all reports finding wrongdoing in what the Park Service did to our family and our community, all of these agencies and safeguards failed to correct the record or curb Park Service overreach at Point Reyes. The Inspector General at Interior told us that they were not equipped to deal with science issues. The National Academy told us they were not equipped to deal with policy issues and would not enter the misconduct arena. We felt helpless, bullied, and ignored.

In fact, even this week the Park Service at Point Reyes continues its nearly decade-long pattern of false claims in the pursuit of a predetermined outcome. Now that the Park Service has driven out our family’s oyster farm, they are turning their attention to the ranchers at Point Reyes. We are heartsick to see the same tactics we faced used against our neighbors. The Park Service has been using a playbook of false science at Point Reyes, and there seems to be no individual or agency who is capable of, or willing to, stop this campaign against our community.

What the Park Service did to our family was unconscionable. This polluted legacy of false science has tainted our dealings with state (California Coastal Commission, California Department of Fish and Game, California Fish and Game Commission) and federal agencies

(United State Geological Survey, National Oceanic and Atmospheric Administration, Marine Mammal Commission), and has resulted in unnecessary regulatory and legal action against our family and our farm. The Park Service false accusations and misconduct infected nearly every interaction we had and impacted otherwise non-controversial processes.

The Committee's hearing is entitled "Zero Accountability: The Consequences of Politically Driven Science." The National Park Service, armed with an agenda to purge the oyster farm and all agriculture from the Seashore, ran wild with taxpayer dollars. They evaded and avoided accountability at every turn. Immediately after the National Academy of Sciences issued a report highly critical of Park Service science, we wrote a detailed letter to Park Service Director Jarvis and asked how Park Service would inform other Federal and State Agencies, local officials, and the public that their scientific claims and accusations were wrong and further asked how the Park Service would correct the record. Director Jarvis refused to answer our letter.

The President promised scientific integrity and we are here today to ask for this Committee's help securing it. If a schoolyard bully takes a ball, he should be caught and punished, and the ball returned. The situation at Point Reyes is no different. Congress should right these wrongs. Those who committed fraud should be held accountable. Drakes Estero is an outstanding body of water, in a remote place, ideal for growing oysters. Until vilified by activist environmental groups, our farm had been compatible with Park Service values, the current PRNS General Management Plan, and the Congressionally-designated pastoral zone. Further, our shellfish cultivation lease with the State of California is still valid through 2029. In purging us from the Seashore and claiming the Estero as Wilderness, the Park Service has overstepped its authority and ignored state-level regulatory partners like the California State Fish & Game Commission.

For almost a century, Point Reyes has been a destination for visitors from the community, the state, the nation, and the world. Next year, the Nation celebrates the National Park Service Centennial. The first act of that Centennial should be to restore scientific integrity, right these wrongs, and protect Congress' intent to preserve these working landscapes.

Thank you for the opportunity to appear before the Subcommittee and tell our story.