

DOC HASTINGS, WA
CHAIRMAN
DON YOUNG, AK
LOUIE GOHMERT, TX
ROB BISHOP, UT
DOUG LAMBORN, CO
ROBERT J. WITTMAN, VA
PAUL C. BROUN, GA
JOHN FLEMING, LA
TOM McCLINTOCK, CA
GLENN THOMPSON, PA
CYNTHIA LUMMIS, WY
DAN BENISHEK, MI
JEFF DUNCAN, SC
SCOTT R. TIPTON, CO
PAUL A. GOSAR, AZ
RAUL R. LABRADOR, ID
STEVE SOUTHERLAND II, FL
BILL FLORES, TX
ANDY HARRIS, MD
JON RUNYAN, NJ
MARK AMODEI, NV
MARKWAYNE MULLIN, OK
CHRIS STEWART, UT
STEVE DAINES, MT
KEVIN CRAMER, ND
DOUG LAMALFA, CA

TODD YOUNG
CHIEF OF STAFF

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

April 5, 2013

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
PETER A. DeFAZIO, OR
ENI F.H. FALCOMAVAEGA, AS
FRANK PALLONE, JR., NJ
GRACE F. NAPOLITANO, CA
RUSH HOLT, NJ
RAUL M. GRIJALVA, AZ
MADELEINE Z. BORDALLO, GU
JIM COSTA, CA
GREGORIO KILILI CAMACHO SABLAN, CNMI
NIKI TSONGAS, MA
PEDRO R. PIERLUISI, PR
COLLEEN W. HANABUSA, HI
TONY CARDENAS, CA
STEVEN HORSFORD, NV
JARED HUFFMAN, CA
RAUL RUIZ, CA
CAROL SHEA-PORTER, NH
ALAN LOWENTHAL, CA
JOE GARCIA, FL
MATTHEW CARTWRIGHT, PA

JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

The Honorable Ken Salazar
Secretary
U.S. Department of the Interior
1951 Constitution Avenue, NW
Washington, DC 20240

Dear Mr. Secretary:

This letter seeks information about the Department of the Interior's ("Department") November 29, 2012, decision not to allow an oyster farm to continue operating within the Point Reyes National Seashore. The National Park Service ("NPS") has for years been dogged by allegations that the science used to estimate harbor seal disturbances and more recently impacts on the National Seashore's soundscape do not justify closure of the Drakes Bay Oyster Company, which has provided a sustainable source of shellfish in northern California and employed more than 30 workers. It is imperative that the Department's decision be based in sound science and consistent with federal law.

An oyster farm had operated in Drakes Estero for decades before the Point Reyes National Seashore was established in 1962. A previous owner of the farm sold land to the National Park Service in 1972 but retained permission to continue operating the oyster farm until 2012. In 1976, a portion of the National Seashore was designated wilderness, while the area housing the oyster farm was designated as "potential wilderness." The NPS considers the oyster farm a nonconforming use that is incompatible for a wilderness area.

In 2009, Congress passed legislation¹ specifically authorizing the Secretary of the Interior to approve a 10-year extension of the farm's authorization and special use permit, notwithstanding any other provision of law. The farm's current owners in 2010 sought a new permit that would allow them to continue operating the farm for another 10 years. Even though the Department was not bound to follow the National Environmental Policy Act ("NEPA"), or any other law, in considering whether to grant the oyster farm's extension, the Department nonetheless undertook a costly, multi-year study under NEPA to determine the farm's environmental impacts. The results of that effort have been controversial.

¹ Public Law 111-98, section 124 of the Department of the Interior, Environment, and Related Agencies Appropriations Act of 2010.

The owners of the farm and members of the public² have raised serious concerns about the process used by the NPS to develop and peer review the September 2011 Draft Environmental Impact Statement, which found the oyster farm had a major impact on the National Seashore's soundscape. For example, the draft estimated the farm's impact by using sound measurements for a jet ski from New Jersey and a cement mixer and failed to explain their use as substitutes for the farm's actual boats and equipment. The NPS issued its Final Environmental Impact Statement in November 2012, reiterating the oyster farm had a major impact on the National Seashore's soundscape

Ultimately, the Department's November 29, 2012, decision stated the farm's authorization should expire and not be renewed because commercial activities are incompatible in a wilderness area and explained that the 2009 law did not trump Congress' previous determination that the area should be wilderness. The decision also clarified it was not based on the scientific data that had been criticized as flawed and that commercial activities related to farming and grazing within the National Seashore's pastoral zone were not impacted.

The Committee on Natural Resources has jurisdiction over matters involving the National Park Service, implementation of NEPA, and fisheries, wildlife, and public lands generally. In order to better understand the legal authority and rationale for the Department's November 29, 2012, decision, it is requested that complete and unredacted copies of the following documents be provided no later than April 26, 2013:

- 1) All drafts of the November 29, 2012 decision memorandum and edits or comments thereto, including any versions with redline/strikeout edits or handwritten edits;
- 2) All emails or other documents sent to, from, or otherwise in the possession of Secretary Ken Salazar, Deputy Secretary David Hayes, Chief of Staff Laura Davis, Senior Advisor David Nawi, Dr. Ralph Morganweck, Dr. Gary Machlis, Dr. Suzette Kimball, Solicitor Hillary Tompkins, Deputy Solicitor Martha Williams, Deputy Solicitor Edward Boling, National Park Service Director Jonathan Jarvis, NPS Pacific West Regional Director Christine Lehnertz, current Point Reyes National Seashore Superintendent Cicely Muldoon, former Superintendent Don Neubacher, Point Reyes National Seashore Chief of Natural Resources Natalie Gates, Point Reyes National Seashore Outreach Coordinator Melanie Gunn, and Point Reyes National Seashore Special Park Uses Coordinator Kevin McKay concerning:

² For example, Dr. Corey Goodman, an elected member of the National Academy of Sciences, filed a scientific integrity complaint with the Department on April 24, 2012, alleging Department employees and a contractor intentionally manipulated and mischaracterized the soundscape data in violation of Department policies. The complaint was addressed to Acting Inspector General Mary Kendall, as well as Dr. Morganweck, the Scientific Integrity Officer for the Department, and Dr. Machlis, the Scientific Integrity Officer for the NPS. Dr. Morganweck and Dr. Machlis recused themselves from hearing the complaint, leaving Ms. Kendall as the official responsible for investigating and responding to Mr. Goodman's allegations. The Office of Inspector General issued its report of investigation on February 7, 2013, finding "no evidence, documents, DEIS revisions, or witnesses that supported the complainant's allegations."

- a. Any analysis of section 124 of Public Law 111-98;
 - b. Communications with any representative of the National Parks Conservation Association, the Sierra Club, the Natural Resources Defense Council, the Point Reyes National Seashore Association, and the West Marin Environmental Action Committee.
 - c. The IG's investigation of Dr. Goodman's scientific integrity complaint, including any emails with IG staff and notes, transcripts, or recordings of interviews with IG staff.
- 3) Secretary Salazar's November 21, 2012 visit to the Drakes Bay Oyster Farm, including copies of all briefing papers, agendas, notes, and travel reimbursements associated with the visit.
 - 4) The June 2011 version of the draft Environmental Impact Statement for the Drakes Bay Oyster Company Special Use Permit.
 - 5) The contract, work assignments, task orders, emails or other communications between the Department and the firm that prepared the Environmental Impact Statement, Vanasse Hangen Brustlin, Inc.
 - 6) The contract, work assignments, task orders, emails or other communications between the Department and the firm that peer reviewed the Draft Environmental Impact Statement, Atkins.

Enclosed with this letter are instructions and definitions for responding to this request. Please have your staff contact Byron Brown at 225-2761 in the Office of Oversight and Investigations with any questions.

Sincerely,



Doc Hastings
Chairman

Enclosure

Enclosure

Responding to Committee Document Requests

A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), instant message, notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

B. Instructions

1. In complying with this document request, you are required to produce all responsive documents, materials, or items that are in your possession, custody, or control, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents,

date or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization, or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses documents that are non-identical or identical copies of the same document.
6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.
7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author, and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at the discretion of the Committee.
9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
12. Production materials should be delivered to:

Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington D.C. 20515