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United States Senate
WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

August 31, 2012

The Honorable Ken Salazar
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Salazar,

In a 53-page study released yesterday, the National Research Council, the premier research organization in the nation, stated that research on the potential impacts that oyster farming has on Drakes Estero is "sparse," and there was "limited scientific information available to support conclusions in Draft Environmental Impact Statement for Drakes Bay Oyster Company." The study confirms what I have known all along – that the Park Service's science is flawed and the agency is making a biased and unfair permit decision against the oyster farm based on unsound and tentative science.

The Council's findings lead to the conclusion that the Park Service has failed to make its case against Drakes Bay Oyster Company. The Council studied eight "resource categories" that the Park Service used to evaluate the oyster farm's environmental impacts – such as wetlands, eelgrass, wildlife, and water quality – and in <u>every</u> instance where the Park Service argued that the oyster farm had "major" or "moderate" impacts, the Council determined that the limited data could also reasonably support findings of "minor" impacts. *See* Table S.1. In other words, the Park Service ignored or neglected the likelihood that the oyster farm's impacts may not be as pronounced as the agency claims.

Furthermore, the Council found "moderate to high levels of uncertainty for seven of the eight resources categories reviewed," and there was "not enough information . . . to establish how the oyster farm's operation could impact the various categories." The Chair of the review committee, and Professor Emeritus at the University of Maryland Center for Environmental Science, Thomas Malone, stated that the Park Service's assessment of oyster farm impacts is akin to "estimating rainfall for an entire year when rainfall records are only available for March."

As you know, the quality of the Park Service's environmental analysis of Drakes Bay Oyster Company has consistently raised troubling questions since 2006:

- In Spring 2007, the Department of the Interior's Inspector General began investigating alleged scientific misconduct by the Park Service when the agency issued reports in 2006 and 2007 on the oyster farm's environmental impacts.

- In May 2009, the National Academy of Sciences concluded that the Park Service "selectively presented, over-interpreted, or misrepresented the available scientific information on potential impacts of the oyster mariculture operation." Despite the Park Service's multiple revisions of its environmental report, the Academy concluded that "[the report] never achieved a rigorous and balanced synthesis of the mariculture impacts. Overall the report gave an interpretation of the science that exaggerated the negative and overlooked potentially beneficial effects of the oyster culture operation."

  At the same time, the Department of the Interior Inspector General also found that the Park Service's Science Advisor leading the Drakes Bay study "misrepresented research" despite being "privy to information contrary" to what she presented, and "did nothing to correct the information before its release to the public." Further, the Inspector General found that the Park Superintendent "intended to bring the potential negative effects of [the oyster operation] to the public's eye."

- In March 2011, Park Service Field Solicitor Gavin Frost reported that a Park Service scientist had suppressed 250,000 photographs studying the oyster farm's effects on harbor seals, and the scientist held fast to a "statistically and scientifically unproven belief" that the oyster farm operations were disturbing seals despite evidence to the contrary. Frost concluded that the Park Service's misconduct "arose from incomplete and biased evaluation and from blurring the line between exploration and advocacy through research."

- The Park Service's draft EIS included noise measurements that appeared to show that oyster boats disturb the quiet of Drakes Estero. However, in March 2012, it came to my attention that the Park Service's measurements did not come from the oyster boats or the surrounding areas, but from jet skis in New Jersey that were part of an unrelated 17 year-old study, and

which were attributed to the oyster farm's operations without explanation. In response to this discovery, the Department of the Interior's Inspector General has opened a new investigation into the Park Service's conduct.

The Park Service's flawed science is threatening the survival of the last remaining oyster cannery in California, in operation for more than 70 years. The family that owns the farm has been farming for four generations. It employs 30 people, produces oysters prized throughout the region, and is run by an owner committed to environmentally sustainable business practices. This is a responsible business that is worthy of continuance.

The Park Service's refusal to extend the oyster farm's permit based on flawed and biased science is wrong, and I urge you to renew the oyster farm's lease without further delay.

Sincerely,

Dianne Feinstein

Dianne Feinstein
United States Senator

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