

Coastal Commission to Lunnys: Yes, You Have No Due Process Rights

Update 7/1: The ruling has been made final. Drakes Bay Oyster Farm has been vindicated. The court ruled that the Coastal Commission abused its discretion and violated environmental law. [The unfair enforcement orders have been overturned.](#)

Update 4/19: Marin County Superior Court Judge Roy Chernus has issued a tentative ruling that the Coastal Commission abused its discretion when it excluded the oyster farm's evidence. A final ruling is expected within weeks.

[As we reported last month](#) in these pages, the California Coastal Commission, in an unfair process, has falsely accused Drakes Bay Oyster Farm of wrongdoing.

In a pattern very similar to the false narrative being conducted against the Lunny family by the Park Service, the Coastal Commission has made a cascading, confusing series of claims that play fast and loose with the facts. All indications are that these two agencies are working together against the oyster farm. They use the same false claims, and neither will acknowledge the expert declarations that counter their anti-oyster farm assertions.

The Commission continues to claim in public that the oyster farm's operations disturb seals. If you read the fine print you'll learn that the actual language is that oyster farm operations have "the potential to disturb harbor seals." This is the same formulation used by the Park Service in its discredited Final Environmental Impact Statement (FEIS).

The much-vaunted "potential to disturb" seals is a shadow of the Park Service's original claim that oyster operations were actually harming the seals, a notion that should have been dispelled once and for all by the recent seal-count data compiled by the Park Service showing that [the harbor seal population in Drakes Estero is healthier than ever.](#)

In a study commissioned by the Marine Mammal Commission in November 2011, marine mammal experts [made it clear](#) that there is no reason to be concerned about the seals in Drakes Estero.

Nevertheless the Park Service worked to keep the seal story alive, first by planting secret cameras that they hoped would catch oyster boats disturbing seals, then when those photos didn't turn up any such evidence, by commissioning a report from the USGS that they apparently hoped would find evidence where there was none, and then finally in desperation changing the USGS report's findings from "no evidence of disturbance" to evidence of "adverse impacts." That falsification is the only support in the FEIS for the untrue charge that the oyster farm disturbs seals.

Falsifying a scientific report is of course scientific misconduct, and a formal complaint about this has been filed by Dr. Corey Goodman, as described in [this press release](#) and as [reported here](#). It will not be surprising to those who have been following this story that Dr. Goodman's scientific misconduct complaint is being stonewalled.

The Commission also continues to claim in public that the oyster farm operates its boats too close to seals, in violation of protocols imposed by other agencies. But as Tom Moore (a retired official the

California Department of Fish and Wildlife who helped draft those protocols) wrote in a strongly worded letter to the Commission, Drakes Bay “has not violated” those protocols. Even though the oyster farm is not in violation, it reached an agreement with the Commission in early 2012 that completely resolved the issue. The Commission should not continue making accusations about an issue that’s long been resolved.

The Commission continues to claim in public that the oyster farm pollutes Drakes Estero with plastic. Not true. The farm operates under a “zero loss” policy. It cleans up other people’s debris; it doesn’t discharge any of its own.

The Commission continues to claim in public that the Lunnys are violating the law because they do not have a permit. But the Commission refuses to process the permit application that has been on file with the Commission since 2006.

The Commission continues to claim in public that it has fined Drakes Bay Oyster Company for improper placement of clams (the oyster farm grows a small number of clams in addition to oysters). Yet so preposterous was that fine—the misplacement was the result of the Commission misreading the farm’s lease from Fish and Wildlife—that the Commission has quietly amended its complaint to withdraw it.

Neither the Park Service nor the Coastal Commission has any evidence of any of these claims against the oyster farm. When Drakes Bay Oyster Farm presented evidence disproving these claims, the Coastal Commission *voted to exclude that evidence*.

Now the Commission is arguing that it had the right to do so. It derisively refers to that exculpatory evidence as a “document dump,” and argues that the Lunnys don’t have the right to question the Commission’s orders.

The Commission is wrong. The Commission does not have the right to railroad a family without due process.

On Tuesday, March 11, oral arguments on this case will be heard in Marin County Superior Court. If the oyster farm’s motion is granted, this will be the first time a Coastal Commission enforcement order has been successfully overturned. Let us hope that justice will be served.

Update: The hearing was rescheduled for April 16. Judge Roy Chernes has issued a tentative ruling that found that the Coastal Commission abused its discretion in excluding Drakes Bay’s evidence. If this ruling stands, it will be a major victory for the oyster farm. Read a [news story](#) about the tentative ruling here.