

# [Cert Petition Denied, Additional Options Being Weighed](#)

The U.S. Supreme Court has declined to grant Drakes Bay Oyster Company's Petition for Certiorari, meaning that the high court will not hear the case.

In a press release, Kevin Lunny, owner of Drakes Bay Oyster Farm said: "We are not yet out of options. While we had hoped the Supreme Court would grant our cert petition requesting a review of the Ninth Circuit's ruling, our Federal case against the government now returns to the District Court, where we will be making decisions over the next few weeks about how to proceed. We are extremely grateful to our customers and supporters for everything they have done for our family and our workers' families over the years."

Read the [Press Release June 30, 2014](#).

The story has been widely covered in the news:

[Drakes Bay Oyster Farm Not Giving Up After High Court Declines to Hear Appeal](#)

[High court turns down California oyster farm](#)

[U.S. Supreme Court Refuses To Consider Case Of Point Reyes National Seashore Oyster Company](#)

[Drakes Bay Update: Marin oyster farm promises to continue fight after high court turns down appeal](#)

[U.S. Supreme Court refuses to take Drakes Bay case](#)

[U.S. Supreme Court Refuses To Consider Case Of Point Reyes National Seashore Oyster Company](#)

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## [Victory: Court Overturns CCC Orders](#)

Drakes Bay Oyster Farm was vindicated today in its fight against unjust enforcement orders imposed last year by the California Coastal Commission.

The Marin County Superior Court has overturned those orders in every significant respect, finding that the Commission's unfair process was an abuse of discretion and a violation of environmental law.

The enforcement orders were based on false allegations for which there was no evidence. Before a

hearing last February, expert evidence disproving the allegations was provided by the Lunnys, but the Commission voted to exclude all the evidence the Lunnys presented in their own defense.

“This is a good day for California,” said [Phyllis Faber](#), a Marin County environmental activist and biologist who was a founding member of the Commission. “The Coastal Commission had seriously abused its power. It was necessary to hold them accountable.”

Drakes Bay’s lawsuit against the Coastal Commission is separate from its suit against the National Park Service, which is currently pending at the U.S. Supreme Court.

The Coastal Commission’s attempts to railroad the Lunnys are reported [here](#) and [here](#).

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## **[Reply Brief Filed in U.S. Supreme Court](#)**

Today, Drakes Bay Oyster Company filed its reply to the government’s brief opposing the oyster farm’s petition to have the U.S. Supreme Court hear the case.

Drakes Bay petitioned the high court on April 14, 2014 for a [writ of certiorari](#) to review the judgment of the United States Court of Appeals for the Ninth Circuit in its case against the government.

The Supreme Court could decide whether to take this case as early as the end of this month.

At stake is whether the government, in making countless everyday decisions, can be taken to court when it abuses its power. The Ninth Circuit held last fall that a federal court does not have jurisdiction to review a discretionary agency decision for abuse of discretion.

The government filed a brief on May 27, 2014 opposing the oyster farm’s petition.

The brief filed today points out the weaknesses of the government’s opposition brief. Drakes Bay has argued that the high court should take the case to resolve “the mother of all circuit splits.” A circuit split is an issue on which two or more circuits in the U.S. court of appeals system have given different interpretations of federal law.

The splits in this case are on three critical issues: jurisdiction to review agency actions for abuse of discretion, applicability of the National Environmental Policy Act (NEPA), and prejudicial error under the Administrative Procedure Act (APA).

The government’s brief does not dispute the existence of these splits, that these splits affect a fundamental issue of administrative law, or that the issue is of national importance.

Because Drakes Bay showed that there is a “reasonable probability” that the Supreme Court will take this case and a “significant possibility” that the oyster farm will win, the Ninth Circuit has allowed Drakes Bay to remain open while it takes its case to the Supreme Court.

Here is a link to the [DBOC Reply Brief in the U.S. Supreme Court](#).

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